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LOCATION AND PATENTING OF MINING CLAIMS AND MILL SITES IN CALIFORNIA

(2000 EDITION)

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March 3, 1849

Location and Patenting of Mining Claims and Mill Sites in California

(2000 Edition)

FOREWORD

This handbook is a must for miners who are considering locating and/or patenting mining claims and sites. Mining lawyers and mineral surveyors will also find this handbook useful.

Several new sections have been added to this handbook from the 1996 edition, as well as updated copies of applicable Federal regulations.

We recognize that few miners are familiar with using and interpreting the many Federal regulatory requirements for locating claims or sites. We have provided in this guide a sequential approach and specific guidance on doing so. It incorporates and reflects an easy-to-understand interpretation of laws and regulations gleaned over many years of processing mining documents by experienced BLM professionals.

Richard Grabowski
Deputy State Director
Division of Energy & Minerals
1999

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(2000 EDITION)

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March 3, 1849

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

LOCATION AND PATENTING OF MINING CLAIMS AND MILL SITES IN CALIFORNIA

(2000 EDITION)

LOCATION AND PATENTING OF MINING CLAIMS AND MILL SITES IN CALIFORNIA

(2000 EDITION)

THE CONCEPT OF DISCOVERY ON LODE AND PLACER MINING CLAIMS

Introduction

Under the General Mining Law of 1872 (May 10,1872) as amended (30 USC 21-54), citizens of the United States or those intending to become citizens are provided the opportunity to explore for, discover, and purchase certain valuable mineral deposits on public domain lands in the United States. The law also sets general standards and guidelines for "claiming" the mineral rights to minerals so "discovered." Provisions are included to allow for local rules to be developed, consistent with Federal laws. Therefore, the State of California establishes the manner of locating mining claims, tunnel sites, and mill sites on public lands under the California Public Resources Code (Chapter 4, Division 2, Sections 2301 through 2326).

The discovery of a valuable mineral deposit properly located under appropriate Federal and State laws is essential for a valid mining claim. The location of mining claims technically comes after the discovery of a valuable mineral deposit (43 CFR 3811.1 and 43 CFR 3831.1).

Definition of Lode and Placer Mining Claims

A lode mining claim is a claim that typically covers a valuable lode, vein, ledge, tabular deposit, or other rock in place between definite walls or boundaries.

Placer mining claims are used for placer deposits and are defined as ". . .including all forms of deposit, excepting veins of quartz, or other rock in place (except some non-metallic minerals described later). They shall be subject to entry and patent, under like circumstances and conditions and upon similar proceedings as are provided for veins on lode claims..." (30 USC 35).

Locatable Minerals

Through Federal laws and regulations, mineral deposits on federally administered land are grouped as (1) locatable, (2) salable, or (3) leasable. This handbook is concerned only with the first group - the locatable deposits or those authorized to be claimed under the General Mining Law of 1872 (as amended).

It is nearly impossible to prepare a complete list of minerals that occur in locatable deposits. This is true because of legal requirements for discovery and because some mineral deposits that are locatable on Federal lands are leasable on the Outer Continental Shelf and on most lands acquired by the United States. Also, common varieties of sand, gravel, stone, cinders, pumice, pumicite and clay are not locatable, but are instead salable and require a sales contract from the Bureau of Land Management (BLM) or the United States Forest Service (USFS). Only the uncommon varieties of these commodities are locatable. Sometimes varieties are determined to be uncommon on a case-by-case basis.

Common and Uncommon Varieties of Minerals

If a deposit is considered to contain a common variety mineral, it is not locatable under the mining laws. A definition of "common varieties" is found in 43 CFR 3711.1 (b) and is as follows:

> "Common varieties" includes deposits which, although they may have value for use in trade, manufacture, the sciences, or in the mechanical or ornamental arts, do not possess distinct, special economic value for such use over and above the normal uses of the general run of such deposits. Mineral materials which occur commonly shall not be deemed to be "common varieties" if a particular deposit has distinct and special properties making it commercially valuable, for use in a manufacturing, industrial, or processing operations. In the determination of commercial value, such factors may be considered as quality and quantity of the deposit, geographical location, proximity to market or point of utilization, accessibility to transportation requirements for reasonable reserves consistent with usual industry practices to serve existing or proposed manufacturing, industrial, or processing facilities, and feasible methods for mining and removal of the material. Limestone suitable for use in the production of cement, metallurgical or chemical grade limestone, gypsum, and the like are not "common varieties."

Section 3 of the Multiple Surface Use Act of July 23, 1955 (30 USC 601), removed common varieties of sand, gravel, cinders, pumice, pumicite, and clay from the locatable minerals category. These common varieties are sold by the BLM and the USFS under the Materials Act of July 31, 1947. The 1955 act provided an exception at 30 USC 611:

> "Common varieties" as used in sections 601, 603, and 611 to 615 of this title does not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value and does not include so-called "block pumice" which occurs in nature in pieces having one dimension of two inches or more.

After July 23, 1955, newly found deposits of common variety minerals on Federal lands could be removed only through sale by the Federal government. If a mining claim was located on a common variety mineral prior to July 23, 1955, the mining claimant must show that the material on the claim could have been mined at a profit as of July 23,1955, or lose the claim. Moreover, the profitability requirement is a continuing one and the claimant could be asked to demonstrate profitability at any time after July 23, 1955, up until the claimant received a mineral patent for the claim.

The definition of common varieties cited above is quite lengthy, and actually is not adequate in determining whether particular mineral deposits are salable or locatable. Federal courts have helped by giving five criteria for distinguishing locatable minerals from common variety minerals. They are set forth in the 1969 9th Circuit Court decision in *McClarty v. Secretary of the Interior*, 408 F.2d 907, 908 (9th Cir. 1969).

1. There must be a comparison of the mineral deposit in question with other such minerals generally.

2. The mineral deposits in question must have a unique property.

3. The unique property must give a deposit a distinct and special value.

4. If the special value is for uses to which ordinary varieties of the mineral are put, the deposit must have some distinct and special value for such use.

5. The distinct and special value must be reflected in the higher price which the material commands in the marketplace.

While it is still difficult to test many materials by these criteria, they are the best available legal guidance, and are used by the BLM in their common variety determination studies. Common variety determinations are directed toward whether the mineral in question is locatable or salable. As such, these studies do not involve the overall economic viability of the deposit as they would in a regular validity examination for a locatable mineral. See also the new USFS regulations at 36 CFR 228 (LR-13 on Pages 323-324) for directions on salable minerals.

Examples of specific commodities for which decisions have been made are:

Bentonite - held to be locatable in *U.S. v. Kaycee Bentonite Corp.*, 64 IBLA 186 (1982). Some varieties may not be locatable.

Building Stone - depends on uniqueness and distinct and special values. See *U.S. v. Dunbar Stone Co.*, 56 IBLA 61, 64-67 (1981) for a good discussion of building stone properties.

Clays - common or salable if used for structural brick, tile, pipe, pressed or face brick, and pottery, earthenware, or stoneware that cannot meet standards of high grade ceramics. Uncommon or locatable if the clay has high refractory properties and quality standards such as for use in china. See *U.S. v. Peck*, 29 IBLA 357 and 84 ID 137 (1977).

Gemstones - value of stone on a mining claim is an important fact (more than ability of stone to take a polish). See *U.S. v. Bolinder*, 28 IBLA 380 (1974).

Geodes - held to be locatable in *U.S. v. Bolinder*, 28 IBLA 192 (1976).

Gypsite - locatable as a soil amendment because it causes a chemical rather than a physical change as in the use of other soil amendments. See *U.S. v. Bunkowski*, 79 ID 43, 47, 48 (1972).

Jasper - held to be locatable in *U.S. v. Stevens*, 14 IBLA 380 (1973).

Limestone - locatable for use in manufacture of Portland cement, but common or salable for use as concrete aggregate or soil additives. See *U.S. v. Alaska Limestone Corp.*, 66 IBLA 316, 324, 318 (1982).

Obsidian - held to be common or salable in *U.S. v. Mansfield,* 35 IBLA 95 (1978).

Pumicite - often common variety, however, considered to be locatable by the BLM in California for use as a pigment-extender in latex flat white paint (Evans, Milne, and Leverette, May 20, 1989). Also, pumicite is considered locatable when used for processing stone-washed jeans. See *United State of America v. Multiple Use Inc.*, 120 IBLA 63-134 (1991).

Sand and Gravel - almost always common or salable for construction uses, even with superior characteristics. See *U.S. v. Henderson*, 68 IBLA 26, 29-30 (1961).

Sunstones (labradorite phenocrysts in basalt) - held to be locatable in *Rogers v. Watt*, 726 F.2d 1376 (9th Cir. 1984).

Terrazzo - common or salable when material chips are used for terrazzo. See *U.S. v. Henderson*, 68 ID 26 (1961).

Volcanic Cinders - common or salable when used as aggregate for the manufacture of cement blocks, or lightweight aggregates. See *U.S. v. Harenberg*, 9 IBLA 77 (1973).

Zeolites - held to be locatable as long as sodium is not present in sufficient quantity so as to be commercially valuable, and if sodium is not essential to the existence of the mineral. See *U.S. v. Union Carbide Corp.*, 31 IBLA 72 and 84 ID 310 (1977).

Discovery

There are legal and technical aspects to be considered for a discovery of a valuable mineral deposit. Unfortunately, Federal statutes do not provide a definition of, nor describe what constitutes, a valuable mineral deposit. The lack of a statutory definition has resulted in judicial and administrative declarations.

Prudent Person Test

The best known test of discovery was in a Land Decision of the Department of the Interior in 1894: *Castle v. Womble*, 19 LD 455 (1894). This famous "prudent person" test or definition of discovery of a valuable mineral deposit was given as follows:

> ...where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine, the requirements of the statutes have been met.

Marketability Test

In 1968 the Supreme Court approved, as a complement to the prudent person test of discovery, a preexisting concept: the marketability test. The marketability test concept has been used by the Department of the Interior for widespread non-metallic minerals since *Layman v. Ellis*, 52 LD 714 (1929). In *Foster v. Seaton*, 271 F.2d 836 (DC Cir. 1959), the test was further upheld.

In *U.S. v. Coleman*, 290 US 602-603 (1968) the Supreme Court ruled:

> Under the mining laws Congress has made public lands available to people for the purpose of mining valuable mineral deposits and not for other purposes. The obvious intent was to reward and encourage the discovery of minerals that are valuable in an economic sense. Minerals which no prudent man will extract because there is no demand for them at a price higher than the cost of extraction and transportation are hardly economically valuable. Thus, profitability is an important consideration in applying the prudent-man test, and the marketability test which the Secretary has used here merely recognizes this fact. Indeed, the marketability test is an admirable effort to identify with greater precision and objectivity the factors relevant to a determination that a mineral deposit is "valuable." It is a logical complement to the "prudent-man test" which the Secretary has been using to interpret the mining laws since 1894.
>
> ....the prudent-man test and the marketability test are not distinct standards, but are complimentary in that the latter is a refinement of the former. While it is true that the marketability test is usually the critical factor in cases involving nonmetallic minerals of widespread occurrence, this is accounted for by the perfectly natural reason that precious metals which are in small supply and for which there is a great demand, sell at a price so high as to leave little room for doubt that they can be extracted and marketed at a profit.

It is clear that the consideration of economic value and market entry for nonmetallic minerals as well as metallic minerals is a critical factor for discovery. For example, a recent Federal 10th Circuit Court Decision in *Roberts v. Morton*, 549 F.2d 163 (10th Cir. 1977) stated:

> ...it is still proper here that the Secretary "take into account the economics of the situation." The required showing by a claimant, however, is that at the time of discovery there is a market sufficiently profitable to attract the efforts of a person of ordinary prudence.

The marketability test refers to the future ability to market and not necessarily to the current marketing of materials from the claim. Speculative future marketability cannot be relied on, only economic circumstances which are rationally predictable from present known facts must be used. *United States v. James J. Heldman et. al.*,14 IBLA 1 (November 27, 1973); *United States v. Ethel Schell Larson and Minerals Trust Corporation,* 9 IBLA 247 (February 2, 1973); *United States v. Menzel G. Johnson,* 16 IBLA 234 (July 10, 1974); *Ideal Basic Industries Inc. v. Morton C.A.*, 542 F.2d 1364 (9th Cir. 1976).

Therefore, the claimant should show that there is a reasonable prospect of selling material from a claim at a profit. It is not required that material has been sold or is selling at a profit.

Timing Concepts for the Marketability Test

In 1983, the Interior Board of Land Appeals (IBLA) presented a new concept regarding marketability. In *Re Pacific Coast Molybdenum*, 75 IBLA 29 (1983) the Board ruled:

> "Present marketability" has never encompassed the examination of either cost or price factors as a specific, finite moment of time, without reference to other economic factors. Rather, the question of whether something is "presently marketable at a profit" simply means that a mining claimant must show that, as a present fact, considering historic price and cost factors and assuming that they will continue, there is a reasonable likelihood of success that a paying mine can be developed. For example, if a claimant has located a deposit of gold which can be mined at a profit, if the price of gold is $500 an ounce, and the evidence is such that there is a reasonable likelihood of sufficient quantity and quality to justify development, that claim can be deemed valid despite the fact that on any specific day gold may be selling at $420 an ounce. This is so because a selling price of $500 an ounce for gold is both within the historic range and expectations of it reaching that level again can be justified as a present matter. On the other hand, if the deposit, because of expenses associated with mining and beneficiation, requires a selling price of $1,500 an ounce, such a claim does not exhibit present marketability. So elevated a price for gold does not represent any relevant historic range and is essentially based on speculation or unsupported hope. It may be expectation, but it is an unreasonable one given present facts. See *United States v. Denison*, 76 ID 233, 239 (1969).

In *United States v. Leroy H. and Sharon Clouser,* 144 IBLA 128 (May 22, 1998) the Board wrote:

> Gold prices more than 5 years prior to the time of the hearing cannot be considered to reflect the likely price in the future where they include abnormally high prices and there is no evidence that there is a reasonable expectation that the high prices will return, given the downward trend in prices in the years preceding the hearing.

This means that all concerned parties are not locked into the daily price quote of gold, or other commodities, but can take a perspective view of average and expected prices over an appropriate period of time. See Figures F-1a and F-1b on Pages 149 and 150.

However, it must be remembered that to patent any mining claim there must be a discovery at the date of application, irrespective of any other date of discovery - *Pruess v. Udall*, 286 F.Supp. 138(1968), affirmed, 410 F.2d 750, cert denied, 396 US 967. Also, the Supreme Court wrote in *Best v. Humboldt Placer Mining Co.*, 371 US 334, 336:

> It must be shown before a patent issues that at the time of the application for patent the claim is valuable for minerals, ...

Another concept that narrows the appropriate time period for marketability determinations on mineral patents only was put forth in *United States v. Norman A. Wittaker (On Reconsideration),* 102 IBLA 166 (1988):

> Based on our review of the applicable judicial precedents, we have concluded that, as a general matter, where a patent application is involved and final certificate has issued, the question of present marketability must be determined by reference to the date on which the claimant fulfilled all of the prerequisites to the making of the entry, i.e., no later than the date of the issuance of the final certificate.

A reaffirmation of this concept was given in *Elmer H. Swanson v. Bruce Babbitt*, F.3d 1348 (9th Cir. 1993) at 1349:

> 5. Patent applicant's rights did not vest upon filing of patent application, but instead upon perfection of his application;
>
> 6. Right to mineral patent accrues when claimant has filed proper patent application and has paid his fee, regardless of when Department of Interior fulfills its purely administerial function of issuing patent.

It is still proper to use the marketability concepts outlined in *Re Pacific Coast Molybdenum*, 75 IBLA 20-29 (1983) on mineral patent applications. However, the date of issuance of Part I of the Mineral Entry Final Certificate must be kept firmly in mind as a reference date.

On June 4, 1998, the Washington Office of the BLM issued new policy regarding the dates for marketability tests. See Attachment A-1 on Pages 325-328. The policy is as follows:

> Absent a withdrawal of the land from mineral entry, the BLM mineral examiner must determine whether the mining claims are supported by a discovery and mill sites are properly used or occupied under the mining law as of two points in time. The first date is the date of the FHFC as specified in the *Wittaker* case. The second date is the date of the mineral examination or, if more information is required of the applicant after the mineral examination the date of receipt of the information requested by the mineral examiner.

> Other than establishing the dates of 3 marketability to be used in the mineral examination and report, nothing in this memorandum changes our technical standards and technical criteria for conducting mineral examinations and preparing the required mineral report.

The issuance of Part 1 of the Mineral Entry Final Certificate results in a segregation of the land involved in the mineral patent application from all forms of entry and appropriation. See *Scott Burnham,* 100 IBLA 94; 94 ID 429 (1988), and *Scott Burnham (On Reconsideration)*, 102 IBLA 363 (1988).

There are three situations where critical time periods other than the present time period of economic evaluation must be considered. These are:

1. For location of placer mining claims over 20 acres in size (association placer mining claims), it is required that there be one claimant for each 20 acres involved, up to the maximum of 160 acres involving eight claimants (one claimant per each 20 acres). If a placer mining claim of 160 acres located by eight claimants is later sold to a single corporation or individual, it is essential that a discovery (mineral was marketable) existed prior to the date of transfer of ownership.

   In *U.S. v. Harenburg*, 9 IBLA 86 (1973), it is stated:

   > If a discovery had been effected prior to the conveyance, the entire 160-acre claim would have been valid and would have passed to the contestees. However, if no discovery then existed, the two Harenburgs could hold only a minimum of 40 acres in one association placer claim. A transferee of an association placer who makes a discovery after the transfer has a right to patent only 20 acres. United States ex rel., *United States Borax Company v. Jekes*, 98 F.2d 271 (DC Cir. 1938), cert. denied. 305 US 619 (1938).

2. Mining claims that have had a withdrawal placed over them after their original filing date, such as those in a designated wilderness area, must be continually supported by a discovery.

   Even though a mineral examination by the BLM may take place long after a withdrawal date, the examination can be appropriate to establish whether or not a discovery existed at the date of withdrawal. See *U.S. v. Lara*, 67 IBLA 48 (1982).

   If, for example, mining claims located in 1960 had a withdrawal placed over them on September 7, 1970, and are now in a designated wilderness area, a discovery of a valuable mineral deposit must be shown in three different time periods - September 7, 1970, October 21, 1976, and at the current time of evaluation.

On May 22, 1998, the Office of the Solicitor (DOI) issued a Memorandum to the Director, BLM regarding the patenting of mining claims and mill sites in Wilderness Areas. See Attachment A-2 on Pages 329-350 for the text of this Memorandum.

3. Claims within the California Desert Conservation Area (CDCA) are usually subject to the requirements of the Federal Land Policy and Management Act of 10-21-1976 (FLPMA, 43 USC 1701). In Section 601(f) of the Act (43 USC 1781(f)), it is stated:

> Subject to valid existing rights, nothing in this Act shall affect the applicability of the United States mining laws on the public lands within the California Desert Conservation Area, except that all mining claims located on public lands within the California Desert Conservation Area shall be subject to such reasonable regulations as the Secretary may prescribe within this section. Any patent issued on any subject mining claim shall recite this limitation and continue to be subject to such regulations. Such regulations shall provide for such measures as may be reasonable to protect the scenic, scientific, and environmental values of the public lands of the California Desert Conservation Area against impairment, and to assure against the pollution of the streams and waters within the California Desert Conservation Area.

For patents issued after October 21, 1976, the patented mining claim owner should check with minerals staff members in the California Desert District to see if their claims are subject to the stipulations cited in No. 3 above.

The term "valid existing rights" means that a claimant has or had a discovery of a valuable mineral deposit at the date in question. The time periods of economic evaluation are critical. Legal data, costs, tax calculations, commodity prices profitability, and so forth must be determined and the deposit shown to be valuable for each different time period or the mining claims cannot be deemed valid.

The Materials Act of 1947 as amended by the Act of July 23, 1955, resulted in the exclusion of common variety minerals (volcanic cinders, for example) from location. However, valid claims for these minerals remain as such if a discovery of a valuable mineral existed as of July 23, 1955, and continued on to the present time. In this situation, it is necessary to perform an economic analysis for July 23, 1955, and through time as best as possible through activity and sales records to the present.

In *Lee Chemicals*, 86 IBLA 164, 167 (1985), the IBLA determined that an application for patent is perfected if the claim is supported by a discovery rather than the date all patent requirements are met. The Board said at 167:

> Thus, the applicability of section 601(f) to the appellant's claims is dependent upon a determination whether these claims were supported by a discovery on or before

> October 21, 1976, the date of enactment of FLPMA. The record in this case clearly establishes that a discovery then existed. Therefore, appellant is correct is correct in its assertion that the reservation was not properly included in its patent.

Discovery on Each Claim

Historically the BLM has considered that each claim should have a discovery within its boundaries, even if two or more claims are contiguous. See *Ranchers Exploration and Development Co. v. Anaconda Co.*, 248 F.Supp. 708 (DC Utah 1965). This concept is not new. In *Waskey v. Hammer*, 223 US 85, 91 (1912), the court ruled: "discovery without the limits of the claim, no matter what its proximity, does not suffice."

In the case of large, low grade gold deposits or other metal or nonmetallic deposits disseminated or spread over a wide area under numerous mining claims, it is apparent that one claim could not support the large capital investment required to develop such deposits. A group of claims would be necessary to support an economic operation. A large deposit of reasonable quality with an appropriate quantity of material is clearly necessary to successfully develop such a mine. The BLM considers this concept in validity examinations of such deposits.

The BLM view is supported by a recent decision in *Jim D. Schlosser, et. al., v. Verle Pierce, et. al.*, 92 IBLA 109 (June 6, 1986) where the IBLA said:

> A bentonite mining claimant is not required to show that each claim he has located is capable of independently supporting a paying mine. Rather, marketability of a known bentonite clay deposit, a low-grade, high volume clay material, may be demonstrated by showing the feasibility of mining several claims under a single operation where each claim is shown to contain sufficient mineralization to qualify for inclusion within the mined group.
>
> ...the locator of a bentonite placer mining claim must show the mineral character of each 10 acre tract within the claim.

Discovery on Large Disseminated Gold Deposits

Dealing with validity of mining claims on large disseminated gold deposits under a few, to as many as 25 or more mining claims, has been a difficult problem. Concerns about the patenting processing, the existing mining law in general, land use and environmental issues, and numerous patent applications, have added to the situation. Concepts and procedures used for validity of mining claims should be thorough, consistent, fair, and technically and legally viable.

A recent decision in *James Collard and Marjorie Collard*, 128 IBLA 266 (March 10, 1994) has clarified procedures in dealing with disseminated and/or widespread lode deposits. The Board said at 266:

> Mineral deposits exposed on adjoining lode mining claims may be aggregated in order to determine whether a valuable mineral deposit is present on each claim. To be considered valuable, each deposit must contain ore of sufficient quality and quantity that a profit would be made after the costs of extracting, removing, and marketing are paid, to include a proportionate share of the expense of setting up a mine and mill.

For validity, it is necessary to certify that a valuable gold deposit exists (a discovery is made) and that part of that deposit is within the boundaries of each individual mining claim. Clearly, each claim cannot support a discovery in terms of overall costs necessary to mine the whole deposit. Key factors for concern are the average grade and number of tons of gold-bearing rock in the deposit, how much of that rock can be mined from each individual claim, gold recovery rate, gold price, and the costs incurred therein.

Briefly, the method of approach is to carefully check geologic and grade maps, assay data, mine cost and production records, and make appropriate summaries. If information is lacking, the mineral examiner should ask the company to provide it. It is critical to relate tons, grade, and gold content in the company model developed from exploration drilling to their model developed through blast hole drilling from pit development, to their model developed through belt sampling of agglomerate prior to its placement on leach pads, or through feed into an autoclave or leach tanks, to actual gold recovery (recovery rate, percentage). There can be a high percentage of variance between models, either positive or negative. The BLM's determinations are largely based on exploration data and it must be determined how accurate those data are, based on the blast hole and agglomerate type sampling in relation to actual gold recovery.

The economic model is then filled in with appropriate inputs. They are based on company records and technical and economic factors agreed upon by the company and the BLM mineral examiners. This model is used for determination of economic viability of the overall deposit.

In order to certify a discovery on individual mining claims, the average grade and tons of gold-bearing material to be mined under each claim must be determined. Where material has not yet been mined, exploration data in consideration with the other test data must be used. After this determination of average grade and tons of material by mining claim, maps with appropriate cross sections must be made showing the data by blocks at each actual or projected bench level. If a significant amount of reserves occur under a mining claim at any bench level, then that claim can be certified as valid. Maps M-1 and M-2, on Pages 164 and 165, show simplified examples from two BLM mineral reports on two large gold mines in California.

Physical Exposure Requirement

Geologic inference (see the Mineral In Character section, following) will not support a discovery. A valuable mineral deposit must be actually and physically exposed within each mining claim (or group of claims). The mineral may be exposed in trenches, cuts, shafts, adits, and drill cores. Geochemical or geophysical anomalies, unsupported and uncorrelated with physical exposures of the mineral, cannot be used for discovery.

There are a number of cases that involve the above concept. A recent compelling analysis of the physical exposure requirement came from the Federal court where it was ruled in *McCall v. Andrus*, 628 F.2d 1188 (1980):

> ....proof of "discovery" requires a showing of an explored mineral deposit on the claim while "mineral in character" may be proved by geological inference coupled with marketability.

Most of the acceptable criteria for actual and physical exposure of a mineral are clear. The following conditions may allow drill core and/or cuttings to be acceptable for discovery:

1. Adequate and proper logs are taken and maintained;

2. Cores or cuttings are left in proper order, clearly marked for proper identification as to drill hole number, depth, and location;

3. Cores, cuttings, and logs are made available to the government mineral examiner for inspection;

4. Assay intervals (or chemical or mineral analysis) and certificates of results from a reputable assayer, chemist, or mineralogist are made available to the government mineral examiner;

5. The examiner is allowed to spot-check certain intervals of core or cuttings for accuracy of grade.

Mineral in Character and the 10-Acre Rule for Placer Claims

Geological Inference

One discovery of a valuable mineral deposit per placer claim is sufficient, whether the claim is 20 acres for an individual placer claim, or other amounts up to a maximum of 160 acres for an association of eight persons (20 acres per person). However, regulations regarding placer claims require that, after discovery of a valuable deposit has been made, each 10-acre plot shall be examined for its mineral-in-character nature (43 CFR 3842). Only those 10-acre plots that are mineral in character can be clear-listed for patent, *U.S. v. Meyers*, 17 IBLA 313 (1974), *U.S. v. Lara,* 67 IBLA 48, 50 (1982), and *McCall v. Andrus*, 628 F.2d 1185 (9th Cir.1980), cert. denied 450 US 996 (1981).

The elements of mineral in character on a placer mining claim are defined as follows:

> It is not essential that there be an actual discovery of mineral on the land. It is sufficient to show only that known conditions are such as reasonably to engender the belief that the land contains mineral of such quality and in such quantity as to render its extractions profitable and justify expenditures to that end. Such belief may be predicated upon geological conditions, discoveries of minerals in adjacent land, and other observable external conditions upon which prudent and experienced men are shown to be accustomed to act; *Southern Pacific Co.*, 71 ID 233 (1964).

Therefore, inference must be drawn from a data base and cannot be merely an unsubstantiated opinion. The geologic inference also must show that minerals occur in amounts that could reasonably be expected to be mined at a profit. Thus mineral in character is essentially discovery through geologic inference.

By way of example, the following considerations were used in determining mineral in character on a mineral patent examination where the inference was that limestone bodies on 10-acre plots could make a contribution to the overall mining operation: (1) bodies were adjacent to existing haul roads; (2) bodies could be mined by open pit methods and concurrently with mining from the main quarry; and (3) sufficient reserves existed on each plot to warrant the taking. See Map M-11 on Page 174. Another example of 10-acre determination is on the Capricorn Fuller's earth deposit. Here the material would be mined by open pit methods and processed nearby. See Map M-12A and M-12B on Pages 175 and 177.

Style of 10-Acre Subdivision

In *U.S. v. Lara* (On Reconsideration), 80 IBLA 215 (1984), the IBLA ruled:

> In determining whether each 10-acre part of a placer claim is mineral in character, the claim must be subdivided to create square 10-acre parcels, to the extent possible, regardless of whether the claim, as laid out on the ground, conforms to the system of public land surveys. This principle was supported by the Ninth Circuit Court of Appeals in *U.S. v. Lara*, 820 F.2d 1535 (9th Cir.1987). If any 10-acre part of a placer claim under patent application has had a mineral survey, and is found to be nonmineral in character, it will require additional survey work to account for the omission of that part.

Discovery Before Transfer of Ownership,
Association Placer Mining Claims

A single party can maintain an association placer claim over 20 acres in size, but there must have been sufficient individuals who made the original location on the association placer claim to have met the 20-acre-per-claimant requirement. Also, a discovery must have been made within the limits of the claim prior to the date of transfer to a lessor number of people. In *U.S. v. Harenburg*, 9 IBLA 860 (1973), the IBLA said:

> ...If a discovery had been effected prior to the conveyance, the entire 160-acre claim would have been valid and would have passed to the contestees. However, if no discovery then existed, the two Harenburgs could hold only a minimum of 40 acres in one association placer claim. A transferee of an association placer, who makes a discovery after the transfer, has a right to patent only 20 acres. *United States ex. rel.*, *United States Borax Company v. Ickes*, 98 F.2d 271 (DC Cir. 1938), cert. denied. 305 US 619 (1938).

Excess Reserves (Unmarketable Resources)

Some nonmetallic minerals subject to the mining law are filed on by many placer mining claims, or a few 160 acre placer mining claims covering a large amount of economically viable material. While the material could be sold from anywhere on the claims, there may be substantially more material than could be sold into the market at the existing rate of sales, in 40 years. This type of situation has been in the past described by the Department of the Interior as “excess reserves”, and the Courts as the “too much” rule.

In *Baker v. U.S.*, 613 F.2d 224 (9th Cir., 1980; cert. denied 449 US 932, 1980), the court had this to say about the “too much” rule (228, 229, and 230):

> Although Interior claims statutory support for the “too much” rule, our examination of the statues and their legislative history revealed nothing which even inferentially supports such a departure from previous mining practice. The “too much” test limits the overall amount of mineral land an individual can claim under the mining laws. Although the mining laws limit the size of claims, they have never set a limit on the number of claims an individual may stake and work. The validity of a claim has always been determined by an inquiry into that particular claim, not by an examination of the individual’s other claims. The “too much” test changes the focus of the relevant inquiry. Although Congress has addressed various abuses under the general mining laws, it has never attempted to either limit the amount of mineral, or the overall number of claims, which can be patented by an individual.
>
> Moreover, the “too much” rule is not workable and is not susceptible of practical application. Under the rule, Interior reserves to itself the decision as to how slowly or rapidly a claim can be worked.
>
> The IBLA exceeded its discretionary and statutory powers when it adopted its “too much” or excess reserves rule. Although Congress may see fit to deal with the issue, it has never done so. The IBLA decision amounts to a legislative enactment by an executive tribunal. The IBLA possesses no such authority under our system of separation of powers.
>
> In sum, we hold that IBLA’s adoption of the “too much” rule was an abuse of discretion which was contrary to existing mining law. The result reached was arbitrary and capricious. The IBLA found that Baker had satisfied both the prudent man and marketability tests, but went on to invalidate the claims one and four under the “too much” test. Since claims one and four were otherwise valid, Baker is entitled to a patent for them.

In *McCall v. Andrus,* 628 F.2d 1185 (9th Cir., 1980), a case considered by some to modify or change the court's finding in *Baker v. U.S.*(described above), a ruling was made on placer claims with a large amount of sand and gravel with a reported life of over 100 years. However, the court said at 1180:

> Our recent decision in *Baker v. United States,* 613 F.2d 224 (9th Cir., 1980), is not controlling here. In Baker, the Board had refused to grant a patent for three entire claims even though it found that a valid discovery had been made on each claim. The claims were all composed of similar material. The Board invalidated two of the claims because it found that Baker had located claims in excess of the reasonably anticipated market need for the mineral (the "too much" test). We held that there was no statutory support for the Board's action. Unlike Baker, here the character of the land claim was contested. The claims which were held invalid here were all covered by calcite material. The hearing examiner noted that it was not economically feasible to extract the type of material on these tracts since there were large deposits of easily removable sand and gravel on the other tracts.

On September 14, 1998, the BLM Washington Office issued an Instruction Memorandum, IM No. 98-167 based on the Interior Dept. Solicitor's Opinion No. M-36984, 3/22/96. See Attachment A-3 on Pages 351-364 for the full text of these two documents.

The policy section of IM No. 98-167 is given below.

> POLICY: BLM is defining the "reasonably foreseeable future" as 40 years for purposes of marketability determinations for validity examinations of mining claims for industrial minerals. When examining such unpatented mining claim(s) for validity, if the supply of claimed minerals appears to exceed the present demand, the mineral examiner should first determine the amount of resource material in that particular mineral deposit which is available for marketing. If the mineral examiner identifies a supply of resource material which exceeds 40 years, the examiner should apply a 40-year projection of market demand to determine the portion of those resources which can be considered a valuable deposit (reserves) under the mining law. In making this determination, the examiner must use a reasonable method which considers the particular mineral involved and the market demand and marketing and financing arrangements for that mineral, other resources in the mining area held by the claimant on both public and private lands, changing market conditions, availability of substitute materials, advancements in technology, and any other relevant factors.
>
> The mineral examiner should use the mining progression outlined in the current approved or proposed mine plan to determine which claims will be mined in that 40-year period. The examiner should consider land containing industrial mineral resources which cannot be mined and marketed within 40 years as nonmineral in character, not presently marketable and, therefore, not available to support a mining claim. If the mine plan indicates that only part of a placer claim contains a valuable deposit under this definition, the examiner should apply the 10-acre rule to determine whether parts of the claim are nonmineral in character. If only part of a lode claim contains a valuable deposit, evaluate the entire claim based on that part of the deposit that is considered valuable under the above definition. (If any portion of a lode claim meets the test of a valuable discovery, the entire claim is valid, as lode claims are not subdivided into smaller tracts.)

Specific Information Required for Showing Discovery

Mineral patent applicants should pay close attention to the requirements for showing discovery of mineral deposits. These showings are critical to the decision on whether or not a mineral patent is issued. Requirements are not great in number, but can be difficult and arduous to address properly. The following requirements of patent applicants are basic and minimal:

1. A brief description of the general geology of the region around the mining claim;
2. A description of the geology and type and distribution of commercial minerals and their relationship to the mining claim;
3. An analysis of the quantity and quality of commercial minerals and the relationship to the mining claim;
4. A relationship of requirements 2 and 3 to the discovery area;

   (Note: In regard to requirements 1 through 4, appropriate surface, underground, topographic, geologic, and other maps showing location of drill holes, sample points, mine workings, mill and other buildings, improvements, and so forth are required. Supporting descriptions should be in the text of the report.)
5. A description of the mining method and equipment used;
6. A description of the reclamation plan and any needed environmental mitigation;

   (Note: In regard to requirements 5 and 6, simplified or detailed flow diagrams are very helpful in understanding mining and processing methods, and should be included by the applicant.)
7. A description of the milling, beneficiation, and metallurgical processing methods;
8. An economic analysis of the operation that includes capitol costs of equipment, and buildings, operating costs for mining and processing, reclamation and environmental mitigation costs, product freight-on-board (f.o.b.) selling prices, related tax elements, and a showing as to the profitability or potential profitability of the operation.

For nonmetallic minerals there are additional requirements:

1. A discussion of why you think your deposit is locatable, that is, not a common variety or salable mineral. See Pages 2-4 of this handbook.
2. A discussion of claimant's ability to enter the market place and sell the products (market entry). Include a discussion of the chemical and physical characteristics and required specifications for sale products.

The above information is in the Narrative Statement Section for lode and placer claims in the patent application chapter of this handbook. See Page 64 of this handbook.

VALIDITY OF MILL SITES

Introduction

Under mining laws and regulations, the claimant of a valid mining claim can in good faith locate as much as five acres of nonmineral land as a mill site. Also, the claimant of a custom quartz mill or reduction works, independent of any mining claim, may locate as much as five acres of nonmineral land as a mill site (30 USC 42 and 43 CFR 3844).

Therefore, there are three types of mill sites:

1. Dependent mill sites used in connection with lode claims;
2. Dependent mill sites used in connection with placer claims;
3. Independent or custom mill sites.

A dependent mill site must be located in good faith on nonmineral land, be no more than five acres in area, be attached to an active valid lode or placer claim (including a patented lode or placer claim), and be in nearly continuous acceptable use (see *United States v. Kuretich,* 54 IBLA 124 (1981) and cases cited therein). The BLM's consideration as to actual use on a 5-acre mill site should generally be limited to a 2-1/2-acre aliquot part under the "2-1/2-acre rule" - see *United States v. Elmer H. Swanson, Livingston Silver. Inc.* 93 IBLA 35 (1986). If an independent mill site is located, a quartz mill or reduction works must be built. See Maps M-3 and M-4 on Pages 166 and 167. Also, annual assessment work is not required for a mill site, but the annual filing of a Notice of Intent to Hold the mill site is required. If appropriate, the mill site must also be filed under the small miner's waiver process by September 1 of each year.

Some Proper and Improper Uses of Dependent Mill Sites

Examples of the proper use of a dependent mill site:

1. Acceptable mill and processing plants and equipment;
2. Mine and overburden dump areas;
3. Mine tailings, tailings ponds and tailings safety dams;
4. Living quarters for mill workmen;

5. Blacksmith shop and tool houses;

6. Water well and spring development with construction of improvements.

Examples of the improper use of a dependent mill site:

1. Access roads;

2. Reclamation work;

3. Loosely proposed intention for some future use;

4. Storage of equipment unrelated to mining;

5. Structures or dwellings unrelated to mining or milling.

In *U.S. v. Collord*, 128 IBLA 266, 289, 291 (1994), the Board held that the following activities do not validate a mill site:

1. Camping on mill sites while performing assessment work and sampling associated with lode claims;

2. Use of a mill site as a staging area for prospecting or assessment work activities on a mining claim, since such activities are not mining operations;

3. Even if prospecting or assessment work activities were to constitute mining, occasional use of the mill site claims does not satisfy;

4. Placement of tools and building materials on the mill site.

In *United States v. Bagwell*, 961 F.d 1450 (9th Cir., 1992), the Court explained:

> "Federal courts have jurisdiction to determine whether possession of a mining claim (in this case a mill site) is in good faith when the United States brings an action to recover possession of public lands" (1453). Therefore, a Federal court has authority to invalidate a claim "to end the bad faith possession of public lands." However, "where the claimant has not taken possession of the land, the Department of the Interior has primary jurisdiction to determine the validity of the mining claims on public lands" (1453-54). But if the claim is occupied, "(p)ossession of public lands in bad faith for purposes not reasonably related to mining need not be tolerated until all of the claims at issue have been declared invalid in administrative proceedings. Instead, the United States may bring an action to recover possession of the public lands in district court" (1454).

Again the Court stated that where there is a bad-faith occupancy, a claim (site) may be invalidated without resorting to determining the validity of a claim (site) in administrative proceedings (1454):

> In sum, if the United States determines that the possession of a mining claim (site) is in bad faith, it may choose to bring an action in Federal court to recover possession of the public lands without first adjudicating the validity of the claim in administrative proceedings. We are well aware that the court's finding on good faith usually determines the validity of a claim as well because good faith is a necessary element of a valid claim.

If there is clear and convincing evidence of bad faith under either of the two following inquires, a claimant may be evicted and the site declared invalid (1455-56):

1. Extent to which a mill site is being used for purposes other than mining --
   - A. Whether the mill site is being used for residence, recreational, or other non-mining purposes;
   - B. The extent to which the land is valuable to the claimant for uses other than mining;
   - C. The amount of ore that has been processed or is currently being processed by the mill;
   - D. Significant periods of nonuse for milling purposes;
   - E. Activity or improvements indicating a good faith intent to undertake milling in the immediate future.
2. Whether a reasonably prudent person would be justified in continuing to expend money or labor developing the mill site --
   - A. Length of time the mill site has not been used;
   - B. Condition of the mill;
   - C. Potential sources of ore to run through the mill;
   - D. Market for the processed ore;
   - E. Operating costs.

Mill sites, like placer mining claims, are located and marked either on aliquot parts of the public land survey or by metes and bounds. Claimants may locate as many mill sites as they can properly and legally support. Proper location and corner monuments (if not by aliquot parts) must be erected. Mill sites can be contiguous to mining claims as long as the land is nonmineral in character. However, sites cannot be located or patented on split estate land where the mineral estate is owned by the United States and the surface is privately owned.

On March 12, 1998, the Washington Office of the BLM issued Instruction Memorandum IM No. 98-74 regarding the patenting of mill sites. See Attachment A-4 on Pages 365-396. In summary, it was stated:

> **Background**: In November 1997, the Solicitor issued a legal opinion to the BLM Director, in which the Secretary concurred, regarding the amount of mill site acreage that an applicant may patent under the Mining Law. The opinion states that an applicant may only patent up to five mill site acres for each of its previously or concurrently patented mining claims (lode or placer). This does not require the Bureau to re-examine the validity of previously patented mining claims. However, if an applicant seeks to patent a mill site in reliance on a previously patented mining claim, the Bureau must ascertain that the applicant is using, or will properly use, the mill site acreage for mining and milling purposes and that the use is in some way connected to the patented claim. If the mill site is related to an unpatented mining claim, the mill site acreage may be patented only if this mining claim for which the applicant has concurrently applied for patent is actually patented before, or at the same time as, the mill site acreage.

The patenting of mill sites requires the posting of a Mineral Survey (if the site is not by aliquot parts) and a Notice of Intent to Patent for at least 30 days. In contrast to mining claim patent requirements, proofs of expenditures are not required.

LOCATION OF MINING CLAIMS AND SITES

Introduction

Under present California law, the office of the county recorder is designated the official place to file notices for mining claims and sites. However, FLPMA of October 21, 1976, made it a Federal requirement to also file a copy of the notice with the BLM State Office. There are presently about 27,500 mining claims, mill sites and tunnel sites in California on record with the BLM.

Often the mining industry and the general public are confused as to the proper procedures for locating and keeping a mining claim or site. This book, prepared by employees of the BLM, attempts to clarify these procedures and thereby assist all concerned persons. In so doing, the authors combine both Federal and California state requirements for locating and recording mining claims, mill sites and tunnel sites, as well as for annual filing requirements. Included in this book are seven example forms that can be photo-copied, filled out, and sent to both the appropriate county recorder (county where the claims/sites are located) and the BLM, California State Office, Sacramento. These example forms are (1) Lode Mining Claim Location Notice, FM-1, (2) Placer Mining Claim Location Notice, FM-2, (3) Mill Site Location Notice, FM-3, (4) Tunnel Site Location Notice, FM-4, (5) Maintenance Fee Payment Form, FM-5, (6) Maintenance Fee Payment Waiver Certification, FM-6, and (7) Affidavit of Assessment Work, FM-7.

Lands Open to Mineral Entry

Mining claim and site locations can be made on public lands in the following 19 states: Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Louisiana, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming (43 CFR 3811.2-1).

Potential claimants may prospect and properly locate claims and sites on vacant public lands administered by the BLM or the USFS, unless that land is already claimed by others or is closed to mineral entry under some special act, regulation, or order.

There is no single map showing the location of all mining claims and sites. A miner is faced with a tedious but important chore of finding out what land is open for mineral entry. Rather than looking randomly, it is better to find a general area of interest, obtain the legal description (meridian, township, range, section, lot, and so forth), then go to a local BLM office or the BLM State Office in Sacramento and check maps, records, and files. California Mining Claim records are on file only in the State Office. Refer to the section of this handbook entitled "Types and Availability of Records in BLM Offices" for direction on the use of official land and mineral records in determining if lands are open to entry and location.

Ultimately, the prospector must check for claim markings on the ground to match the records with monument locations. On-the-ground monuments take precedence over written location notice descriptions.

Who May Locate Mining Claims and Sites

Under appropriate laws of the United States, a mining claim is a particular piece of land, valuable for specific mineral deposits to which a person asserts a right of possession for the purpose of developing and extracting a valuable mineral deposit. The land remains, however, under the ownership of the United States.

The Code of Federal Regulations (43 CFR 3832) tells who may locate claims:

> Citizens of the United States, or those who have declared their intention to become such, including minors who have reached the age of discretion and corporations organized under the laws of any State, may make mining locations (also site locations). Agents may make locations for qualified locators.

Minors who are citizens may locate mining claims (*Thompson v. Spray*, 14 P. 182 (Cal. 1887); 43 CFR 3832.1). Also parents of minors may locate claims on behalf of their children (*U.S. v. Haskins*, 59 IBLA 1, 88 (1981); *West v. U.S.*, 30 F.d 739 (DC Cir., 1929)).

Non-citizens (aliens) filing and holding mining claims are in a special category. Corbin has outlined some of the particulars regarding aliens and their holding of mining claims (*American Institute of Mining Engineers*, 1988). The following section is from his paper:

> If an alien should locate a claim, his rights to the claim are not void but voidable, as he is subject to losing his rights only by government action (*Manual v. Wulf*, 152 U.S. 505 (1894)). For example, a locator who stakes a claim over a prior locator who is not a United States citizen and has not declared his intention to become such is not entitled to assert priority (*Herrington v. Martinez*, 45 F.Supp. 543 (D.C. Cal. 1945)). If a mining claim is located by an alien and the alien subsequently declares his intention to become a citizen and no adverse rights have been initiated, such declaration relates back to the date of location of acquisition of the alien's interest and validates the location (*Shea v. Nilima*, 133 F. 209 (1904)). An alien may own unpatented mining claims and protect his rights through adverse proceedings, but is not qualified to obtain a patent (*Ginaca v. Peterson*, 262 F. 904 (1920)).

There is no legal limit to the number of claims or sites a person or corporation may hold or acquire (*St. Louis Smelting and Refining Co. v. Kemp*, 104 U.S. 636 (1882)). For any claim to be legal, valid, and stand up to challenge by other claimants, there must be a discovery of a valuable mineral deposit.

Requirements for Mining Claim and Site Locations

Preface

Strictly speaking, a location is not the same as a mining claim. Location of a mining claim is the act of performing the necessary tasks to appropriate the land claim according to applicable laws and regulations (*St. Louis Smelting Company v. Kemp*, 104 U.S. 636 (1881)).

The following sections describe the methods and procedures used to properly locate a mining claim or site. As California laws supplement Federal laws and regulations, and compliance with both is required, the following sections include a discussion of both.

Marking Claim and Site Boundaries

Unless a mining claim or site is properly located and marked, it is invalid. Locations should be distinctly marked on the ground so that boundaries can be readily traced and corners found. There are legal exceptions to this statement for placer claims and mill sites laid out on the U.S. Public Land Survey grid showing townships, ranges, and section lines. In this case, only the discovery or location post with properly attached notices is required. Even where not required by law, it is still a good idea to mark your corners and boundaries so they are clearly evident to others who may wish to locate in the same area.

In 1991, California Senate Bill No. 84 was passed into law. The Act amends Sections 3900, 3901, and 3915 of the Public Resources Code regarding the marking of claims. It is of critical importance for the miner to comply with this Act. Therefore, in full it reads:

> SECTION 1. Section 3900 of the Public Resources Code is amended to read:
>
> 3900. Any person, who is a citizen of the United States or who has declared his or her intention to become a citizen, and who discovers a vein or lode of quartz, or other rock in

place, bearing gold, silver, cinnabar, lead, tin, copper, or any other valuable deposit, may locate a claim upon the vein or lode, by defining the boundaries of the claim, in the manner specified in this chapter, by erecting at the point of discovery a monument as defined in Section 3915, and by posting in or on the monument a notice of the location. The notice shall contain all of the following:

(a) The name of the lode or claim;

(b) The name, current mailing address or current residence address of the locator;

(c) The number of linear feet claimed in length along the course of the vein, each way from the point of discovery, with the width on each side of the center of the claim, and the general course of the vein or lode, as near as possible;

(d) The date of location, which shall be the date of posting the notice;

(e) A description of the type of monuments used for the discovery and corner monuments;

(f) A description of the claim by reference to some natural object, or permanent monument, as will identify the claim located.

SECTION 2. Section 3901 of the Public Resources Code is amended to read:

3901. The locator of any lode mining claim shall define the boundaries of the claim so that they may be readily traced, but in no case shall the claim extend more than 1,500 feet along the course of the vein or lode, or more than 300 feet on either side thereof as measured from the centerline of the vein at the surface. Within 60 days after the date of location of any lode mining claim located, the locator shall erect at each corner of the claim, a monument as defined in Section 3915. Each corner monument so erected shall bear or contain markings sufficient to appropriately designate the corner of the mining claim and the name of the claim to which it pertains.

SECTION 3. Section 3915 of the Public Resources Code is amended to read (see Figure F-2, Page 151):

3915. (a) The following are the only monuments which may be used pursuant to this chapter:

(1) A wooden post not less than 1-1/2 inches in diameter projecting at least two feet above the ground.

(2) A mound of stone projecting at least two feet above the ground.

(3) A nonperforated, capped metal post or solid metal rod, not less than one inch in diameter and projecting at least two feet above the ground.

(b) Where, by reason of precipitous ground, it is impractical or dangerous to place a monument in its true position, a witness monument may be erected as near thereto as the nature of the ground will permit and marked so as to identify the true position.

(c) Where, by reason of working the claim, it is impractical or dangerous to maintain a monument in its true position, a witness monument shall be erected as near thereto as the nature of the ground will permit and marked so as to identify the true position.

(d) Any person using on January 1, 1992, or who has previously erected, any monument or object other than those defined in this section for the purposes of this chapter shall have until January 1, 1995, to comply with this section or remove those monuments which are not in compliance.

(e) Within 180 days of abandonment, relinquishment, or loss of a claim, in effect on January 1, 1992, all monuments pertaining to that claim shall be permanently removed by the locator. A person who violates this subdivision shall be subject to a fine of not more than fifty dollars ($50) for each monument which is not removed and additionally liable for any cost incurred by the federal, state, or county government agency which removes any monument or has it removed.

SECTION 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

Lode Mining Claims and Notices

Federal regulations regarding Lode Mining Claim Location Notices and the required diagrams are found in 43 CFR 3830 and 3840. See LR-8 on Pages 283-292 and LR-9 on Pages 301-304. Methods of describing and monumenting claims and sites are shown at Figure F-2 on Page 151. Figure F-3 on Page 152 shows how to illustrate the written location description using meridian, township, range, and aliquot parts of a section. A sample Lode Mining Claim Location Notice is shown as Form FM-1 on Pages 179-180. By way of summary of the information required in Form FM-1, the following important points are given:

1. Remember there are only three types of approved monuments that may be placed at the discovery site, and at all four corners of the claim.

2. Mining claim name, date of location, geographic location, posting data, and description of the discovery monument and its relation to some permanent monument are completed for Items 1 through 5, 9 and 10 on Form FM-1.

Mark the appropriate box in Item 4 for the quarter section(s) in which the claim is located. Also, record the section(s), township(s), range(s), and meridian (San Bernardino - SBM, Mt. Diablo - MDM, or Humboldt - HM). See Figure F-4 on Page 153 for the way to outline your claims on a U.S. Geological Survey Topographic Map (Item 9). Make sure that your claim location is properly plotted on the map and that this drawing matches the written location description under Item 4. **Remember that the date of location is the date of the erection and posting of the discovery monument, and not the filing date of the notice.** Notices must be filed with the BLM within 90 days of the date of location as stated on the location notice, or the recordation will be rejected.

3. General information concerning the claim, the deposit, and the erection of corner monuments is completed in Items 6-8. A lode mining claim cannot be more than 1,500 feet long and 600 feet wide. It should be centered along the course of the vein, lode, ledge, or tabular deposit or zone. See Figure F-2 on Page 151. Claim boundary lines must be regular, straight, and parallel in a rectangular configuration, except where not possible such as where filling in a small irregular space between other claims or private lands. See 43 CFR 3841.4-3, LR-9 on Page 301, for details. End lines of claims must be parallel in order to acquire underground extralateral rights.

   Extralateral rights are only for lode claims where a continuous vein (or other pockets, etc.) outcrops on the surface and dips downward at an angle from the vertical and passes beyond the claim's surface side lines (not the end lines) at depth. Therefore, the claimant involved may have rights to that portion of the vein (or other) that continues underground past the vertically extended side lines of the claim and may follow the vein as it continues under an adjacent lode claim if the claimant is the senior claimant (the first to locate the vein).

   In Item 8, it is important to note the time frame of 60 days to erect posted corner monuments. The BLM strongly recommends that the claimant erect these posted monuments at the same time the discovery monument is erected and posted. Claimants must be sure to identify the claim corners as NE1/4, NW1/4, SE1/4, or SW1/4. Be sure that the written description corresponds to the drawn illustration.

4. Print or type information at Item 11 and sign and date under Item 12.

5. Carefully read the material that follows Item 12 regarding filing deadlines. The notice must be filed with the BLM, together with all fees, within 90 days of the location date used in Item 2.

The BLM also strongly recommends that the claimant keep a field notebook with certain pertinent records, names of witnesses and appropriate dates. Included in this notebook should be pictures of all monuments, their description, and their dates of erection and posting.

Placer Mining Claims and Notices

Where there is a U.S. land survey, only one discovery, one location monument and one location notice is necessary for a placer mining claim whether it is of 20 acres, or an association placer mining claim of as much as 160 acres (the maximum allowed by law and requiring a minimum of eight claimants). An association placer mining claim requires one party of interest for each 20 acres until the maximum of 160 acres is reached. Therefore, an association placer mining claim of, say, 80 acres requires four claimants. Corporations cannot locate association placer mining claims, but can locate individual 20-acre claims. Separate location notices, plus fees, are required for each 20-acre claim.

Dummy Locators. A word of caution about using the names of employees or friends to obtain more land than is proper on association placer mining claims. In *Cook v. Klonos,* 164 F 529, 538 (9th Cir., 1908), it was stated:

> The question here is, not whether an individual can purchase mining claims after they have been located and hold them in his own name, but whether an individual can, by the use of the names of his friends, relatives, or employees as dummies, locate for his own benefit a greater area of mining ground than that allowed by law.
>
> The mineral land laws of the United States are extremely liberal in the requirements under which possessory rights may be acquired. The few restrictions imposed are only intended to prevent the primary location and accumulation of large tracts of land by a few persons, and to encourage the exploration of the mineral resources of the public land by actual bona fide locators. The scheme of using the names of dummy locators in making the location of a mining claim for the purpose of securing a concealed interest in such claim appears to be contrary to the purpose of the statute; but when this scheme is used to secure an interest in a claim for a single individual, not only concealed but in excess of the limit of 20 acres, it is plainly in violation of the letter of the law, and when, as in this case, all the locators had knowledge of the concealed interest and were parties to the transaction, it renders the location void.

All placer mining claims must conform as nearly as possible with the U.S. System of Public Land Surveys and the rectangular subdivisions of these surveys, whether the locations are on surveyed or unsurveyed lands. See 43 CFR 3842.1-5, LR-9 on Page 301, for details. Claims described by private surveys will not be accepted if they do not match the approved U.S. land survey for that township/section. Diagrams of some of these placer mining claims are shown in Figures F-2 and F-4 on Pages 151 and 153.

Where a U.S. land survey has been extended over the subject land, a placer claim is taken by legal subdivisions through aliquot part description (i.e., E1/2NW1/4SW1/4, Sec.3, T.13N., R.10E., MDM). Corner monuments are not required, but it is recommended that a claimant place posted end monuments to avoid any confusion and possible overfiling by other persons (Cal. Pub. Res. Code, Chap. 4, Div. 2, Sec. 2303 for details). Where there is no U.S. land survey in the area, a placer claim must be located in the same manner as a lode claim. In addition to a discovery monument, all corners must be monumented and posted, and boundaries must be marked so they can be readily traced.

The following important points summarize information required for Placer Location Notices. See Form FM-2 on Pages 181-182.

1. Mining claim name, date of location, geographic location, posting data, description of discovery monument, and the number of acres claimed are completed for Items 1 through 4 and 7 through 9. Make sure that your claim is properly plotted on the topographic map (Item 7) and that this location matches the written description at Item 4. Remember that each claimant may claim only a maximum of 20 acres.

2. Items 5 and 6 are filled out only if the claim is in an area where there is no U.S. Public Land Survey.

3. Read the section on Placer Mining Claims In Powersite Withdrawals to see if you need to fill out Item 10. If you do not, mark NA for "not applicable" in the space provided.

4. Print or type information at Item 11 and sign and date under Item 12. (Note: Use a continuation sheet if there are more claimants than the four spaces provided at Items 11 and 12.)

5. Carefully read the material that follows Item 12 regarding filing deadlines. The notice must be filed with the BLM, together with all fees, within 90 days of the location date used in Item 2.

Elongated and Gulch Placer Mining Claims

As mentioned above all placer mining claims must conform as nearly as possible with the legal subdivisions of the U.S. Public Land Survey. This means that claims must be configured in squares and rectangles. Conformity to the rectangular survey system is required. Long narrow strips or irregular shapes are not allowed.

However, some placer mining claims can be located that do not comply strictly with the legal subdivisions. Requirements for these claims are set out at 43 CFR 3842.1-5(c):

> Where a placer location by one or two persons can be entirely included within a square 40-acre tract, by three or four persons within two square 40-acre tracts placed end to end, by five or six persons within three square 40-acre tracts, and by seven or eight persons within four square 40-acre tracts, such locations will be regarded as within the requirements where strict conformity is impracticable.

(Note: This requirement for square configurations whenever possible does not negate the requirement that no one claimant may hold more than 20 acres per claim.)

See also *Snow Flake Fraction Placer*, 37 LD 250 (1908), and the information on contiguous placer claims under the section on Location Notices and Filing Fees.

Unusually long placer mining claims, called gulch placers, are rarely located and only in unique environments. The length requirements mentioned above can be waived where "mineral deposits are confined within a narrow strip of land in the bed and on the banks of a small stream in a canyon flanked by abrupt walls or rocky slopes on each side, containing no mineral, agricultural or timber values" (*William F. Carr*, 53 ID 431 (1931)).

Gulch placer mining claims are located by the metes and bounds system as are lode mining claims. Side and end lines should be straight and parallel, and the discovery monument keyed to some natural object. See Items 5 and 6 on Form FM-2 on Page 181.

In the Interior Decision regarding *Carr* (cited above), a placer mining claim a little over a mile in length was allowed because it met the stringent requirements for a gulch placer mining claim. The BLM strongly emphasizes, however, that true gulch placer deposits are very rare, and a claimant should consult a mining lawyer before locating one. In most cases, a valuable placer deposit can be located by other types of placer mining claims. Claimants should remember the caution given in 43 CFR 3842.1-5(d):

> Claimants should bear in mind that it is the policy of the government to have all entries whether of agricultural or mineral lands as compact and regular in form as reasonably practicable, and that it will not permit or sanction entries or locations which cut the public domain into long narrow strips or grossly irregular or fantastically shaped tracts (*Snow Flake Fraction Placer*, 37 LD 250).

Remember that "whether a placer location conforms reasonably with the legal subdivisions of the public survey is a question of fact to be determined in each case, and no location will be passed to patent without satisfactory evidence in this regard," 43 CFR 3842.1-5(d).

Placer Mining Claims in Powersite Withdrawals

Prior to the passage of Public Law 359, Mining Claims Rights Restoration Act of August 11, 1955 (30 USC 621), powersite lands were not open to location of mining claims and sites. This Act opened powersite lands to location under certain circumstances.

Lands under powersite withdrawal can be determined from BLM master title plat records (see section on Master Title Plats) and automated serial pages established for new power projects. These records are available in the BLM district and area offices as well as the California State Office in Sacramento.

In regard to placer mining claims, the Restoration Act in Section 621 (b) states as follows:

> The locator of a placer claim under this Act, however, shall conduct no mining operations for a period of sixty days after the filing of a notice of location pursuant to Section 4 of this Act. If the Secretary of the Interior, within 60 days from the filing of the notice of location, notifies the locator by registered mail of the Secretary's intention to hold a public hearing to determine whether placer mining operations would substantially interfere with other uses of the land included within the placer claim, mining operations on that claim shall be further suspended until the Secretary has held the hearing and has issued an appropriate order. The order issued by the Secretary of the Interior shall provide for one of the following: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining upon the condition that the locator shall, following placer operations, restore the surface of the claim to the condition in which it was immediately prior to those operations; or (3) a general permission to engage in placer mining.

Proper filing under the Act is accomplished by making a notation on the Placer Mining Location Notice under Item 10, Form FM-2 "filed under P.L. 359."

(Note: Upon notification of a P.L. 359 placer mining claim location, the BLM will contact the Federal Energy Regulatory Commission to confirm if the subject land is open to the filing of mining claims. If land contains an active powersite or was otherwise not open on the date of the claim location, the claim or portion of the claim will be declared null and void and the locators will be notified by the BLM.)

Lode Mining Claims in Powersite Withdrawals

Lode mining claims in Powersite Withdrawals are also filed under P.L. 359. Lode claims are only sent to the Federal Energy Regulatory Commission to see if there is an active project on the lands covered by the location notice that would cause the claim to be declared null and void. Hearings are not held on lode mining claims and the claimant is not prohibited from mining for the 60-day period.

Mill Sites and Notices (California)

Under mining laws and regulations, the claimant of a valid mining claim can in good faith locate as many as five acres of nonmineral land as a mill site for proper mill site uses. Also, the claimants of a custom quartz mill or reduction works, independent of any mining claim, may locate as many as five acres of nonmineral land as a mill site (30 USC 42 and 43 CFR 3844). See also the section under Validity of Mill Sites on Page 17 of this book.

A mill site is located and marked as are placer mining claims, either on the U.S. Public Land Survey, or by metes and bounds. See the section on Placer Mining Claims, Pages 26-27; also see Figures F-2 and F-4 on Pages 151 and 153, and Cal. Pub. Res. Code, Chap. 4, Div. 2, Sec. 2312.

Form FM-3 on Pages 183-184, shows an example of a Mill Site Location Notice (California). By way of summary of the information asked for in Form FM-3, the following important points are included:

1. Mill site name, date of location, geographic location, posting data, description of the location monument, and the number of acres claimed are completed for Items 1 through 4 and 7 through 9. See Figures F-2, F-3, and F-4 on Pages 151-153, for help in completing Items 4 and 7. The site must be properly plotted on the topographic map (Item 7) and this location must match the location under Item 4. A location monument is not a discovery monument and, therefore, can be placed anywhere on the mill site. It must be properly posted, however.

2. Items 5 and 6 are filled out only if the claim is in an area where there is no U.S. Public Land Survey.

3. Item 10 is checked according to the type of mill site located. See above.

4. Print or type information at Item 11 and sign and date at Item 12.

5. Carefully read the material that follows Item 12 regarding filing deadlines. The notice must be filed with the BLM, together with all fees, within 90 days of the location date used in Item 2.

Placer Claims Over Tailings on a Mill Site

Mine and mill dumps and/or tailings are personal property and not available to file a claim on until they are abandoned. Abandonment requires both an intention to abandon and actual relinquishment.

If dumps and/or tailings are moved and deposited on open public lands by natural processes, they can be filed on with placer mining claims. A word of caution to those who might file - materials may have toxic substances in them.

It does not seem reasonable, however, to expect that these claims could be patented. One, the materials were not naturally deposited originally (even if moved by erosion), and two, it would appear to circumvent the intent of the mining law.

See *U.S., George B. Conway, Intervenor v. Grasso,* 53L.D. 115, 125-26 (1930) for more information.

Tunnel Sites and Notices (California)

The Mining Law of 1872 established the right to locate tunnel sites as a means of exploring for "blind" veins or lodes not previously known to exist as of the date of location of the tunnel. See 43 CFR 3843, LR-9 Page 301, for current Federal regulations regarding tunnel sites. A tunnel site can be regarded more as a right-of-way rather than as a mining claim. The term "blind" refers to lodes or veins that do not appear on the surface.

The claimant of a tunnel site has the right to locate a lode mining claim on any "blind" lodes or veins cut, discovered, or intersected in the tunnel. Any lode mining claims located for veins discovered in the tunnel will date back to the date of location of the tunnel site. The locator of the tunnel has the exclusive right to explore 3,000 feet from the face or point of commencement of the tunnel (in a straight line). The term "face" refers to the first working face formed in the tunnel and signifies the point at which the tunnel actually enters cover.

Failure to work on the tunnel with "reasonable diligence" for a six month period shall be considered an abandonment of the right to all undiscovered veins or lodes found across the line of the tunnel. Lode mining claims located by other parties, after commencement of the tunnel for lodes not appearing at the surface and within the area located for the tunnel, are invalid. Also, tunnel sites cannot be amended into lode claims because they are not mining claims. A mineral patent is not issued for a tunnel site, but it is possible to patent a lode mining claim for a blind vein or lode discovered in the tunnel.

Federal and State procedures should be followed when locating a tunnel site on the ground (see Figures F-2, F-3, F-4 and F-5 on Pages 151-154) and in completing the data required on Tunnel Site Location Notices (see Form FM-4 on Page 185).

Give proper notice of the tunnel location by erecting and describing a conspicuous and substantial monument at the face or point of commencement of the tunnel, and record the date. See items 2 and 3 on Form FM-4.

Post a copy of the location notice on the monument with the following information:

1. Tunnel site name at Item 1.

2. Name, current mailing address, or current residence address of the locator at Item 11.

3. Date of location, which shall be the date of posting of such notice (Cal. Pub. Res. Code, Chap. 4, Div. 2, Sec. 2308 (b)) at Item 2.

4. Actual or proposed course or direction of the tunnel at Item 7.

5. Height and width of the tunnel at Item 8.

6. The course and distance from the face or point of commencement of the tunnel to some permanent well-known object in the vicinity to establish the position of the tunnel at Item 5.

7. Give the date that the line (compass direction) of the tunnel was marked by placing proper monuments along it on the surface, at an interval of not more than 600 feet, to the end of the tunnel line, 3,000 feet from the face. Describe the monuments at Item 9.

8. Complete tunnel site location data at Items 4 and 6, and 10. Mark the appropriate box in Item 4 for the quarter-section in which the tunnel site is located. Also, record the section, township, range, and meridian (San Bernardino - SBM, Mt. Diablo - MDM, or Humboldt - HM). See Figure F-4 on Page 153 for help in sketching out the tunnel course on a topographic map. Make sure that the site location is properly plotted on the map and that this location matches the written description at Item 4.

9. Print or type information at Item 11 and sign and date at Item 12.

10. Carefully read the material that follows Item 13 regarding filing deadlines. The notice must be filed with BLM, together with all fees, within 90 days of the location date used in Item 2.

A Word of Caution

Any person who willfully makes a false statement with respect to any mining claim or site on the posted location notice or on the recorded notice shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding one hundred dollars ($100) or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment (Cal. Pub. Res. Code, Chap. 4, Div. 2, Sec. 2313a).

Also the following section in 43 CFR 1821.3-1(b) is applicable:

> Unsworn statements in public land matters are subject to Title 18, USC, Section 1001, which makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statement or representations as to any matter within its jurisdiction.

Overfiling (Claim Jumping)

If the claim is valid by virtue of having made a discovery, having been properly located (monumented and posted) and recorded, the necessary assessment work done, and required maintenance fees paid or necessary waivers filed and properly recorded within legally defined time frames, then the claim is not subject to location by others. In short, a claim located by filing paper only, or by locating on the ground and filing over another person's valid claim, is illegal (*Beek v. Meagher*, 104 US 279, 284 (1881)).

It is to the benefit of the person involved in mining claim location and work to see that the letter of the laws and regulations have been followed so as to keep the claim as safe as possible from claim jumpers. If claimants do not follow proper procedures they may lose their claim to another claimant. A dispute between rival claimants is a civil matter for State courts to decide. The BLM will not become involved in rival claimants' disputes.

Proper Location by Lode or Placer Mining Claim

Often it is clear what type of claim is a proper one because of the particular mineral deposit in question. For example, a quartz vein in slate is clearly located as a lode mining claim. Free gold in stream or bank conglomerate is clearly located by a placer mining claim. At other times, it may be unclear what type of mining claim is proper to locate. For example, a carbonate rock bed that is flat, lying with little or no overburden, containing suitable raw material for cement manufacture, should be located as placer claims. A limestone bed with the same raw material, but discontinuous in nature, dipping steeply from the horizontal, and enclosed by intrusive igneous rock with definite walls, probably should be located by lode claims. In compliance with the Placer Building Stone Act of August 4, 1892 (30 USC 161), any limestone bed that has suitable material for building stone and is chiefly valuable for building stone should be located with placer claims. However, if the limestone material is used for common aggregate, it is salable and requires a sales contract and is therefore not locatable at all.

Perlite can be located with lode mining claims. Specialty clay or gypsum may be located with either lode or placer mining claims, depending on the nature of the deposit (see discussion regarding limestone in the preceding paragraph). Disseminated gold and copper deposits are located with lode claims even though there may be no continuous veins. See discussion in the section entitled "Discovery on Large Disseminated Gold Deposits", Page 10.

Sometimes a proper mining claim location requires a legal determination by the IBLA (see *Estate of Arthur C.W. Bowen*, 18 IBLA 383 (1975) for a discussion of the issue). If you have a question in this regard, talk to experts in your closest BLM office and/or seek advice from a mining attorney.

Location of Lode Over Placer Mining Claims and the Reverse

Placer mining claims have an equality both in procedure and rights with lode claims, but a lode claim provides no rights to placer deposits and a placer claim provides no rights to lode deposits (*Clipper Mining Company v. Eli Mining and Land Company*, 194 US 220 (1904)).

The above-cited Supreme Court decision discusses the fact that a person has no right to enter upon a valid placer mining claim to search for, or locate a lode claim without the express permission of the placer mining claim claimant. Overly aggressive lode prospectors may not interfere with the mining operation of the placer mining claimant. The BLM strongly recommends that, if a lode prospector wishes to search for minerals on a valid placer claim, written permission be obtained from the placer claimant.

If a claimant of a valid placer mining claim wishes to search for lodes on his or her claim, they may do so; but, they will have no title to lode minerals without filing a lode mining claim (*Campbell v. McIntyre*, 295 F.Cas. 45 (9th Cir., 1924)).

When in doubt about these matters, seek advice from a mining attorney.

RECORDATION (FILING) OF MINING CLAIMS AND SITES

Introduction

In accordance with Section 314 of FLPMA of October 21, 1976 (43 USC 1744), and the implementing regulations at 43 CFR 3833, all unpatented mining claims, mill, and tunnel sites located on Federal land are required to be recorded in the proper county office and the appropriate BLM office.

The objectives of the BLM regulations at 43 CFR 3833.0-2 are:

> (a) To determine the number and location of unpatented mining claims, mill sites, or tunnel sites located on Federal lands in order to assist in the surface management of those lands and the mineral resources therein;
>
> (b) To remove any cloud on the title to those lands that may exist because they are subject to mining claims that may have been abandoned;
>
> (c) To provide the BLM with information as to the location of active mining claims;
>
> (d) To keep the BLM informed of transfers of interest in unpatented mining claims, mill sites, or tunnel sites.

In California all recordation documents must be filed in the BLM California State Office, Sacramento. The State Office is the only proper Federal office in California for filing such documents. All documents may be mailed to the California State Office. If mailed, the BLM suggests the documents be mailed by certified mail with a return receipt request and a note on the receipt naming the documents enclosed. Such a receipt can provide proof, if required, that the BLM received the documents within the time periods requested by law.

Filing Periods for Mining Claim and Site Recordation

Unpatented lode and placer mining claim, mill, and tunnel site notices must be filed in both the appropriate County Recorder's Office and the California State Office of the BLM within 90 days from the date of location. Remember that the date of location is the date of the erection and posting of a discovery or location monument.

Location Notices and Filing Fees

Proper location notices should be used for the mining claim or site. The claimant should describe the lode claim on a lode location notice, a mill site on a mill site location notice, and so forth. The forms given in this book may be copied and used.

Claimants of all mining claims and sites located on or after August 11, 1993, must pay at the time of recording at the BLM California State Office, a $25 location fee, a $100 maintenance fee (to cover the assessment year of location) and a $10 service charge. Additionally, current law requires that, at least through September 1, 2001, claimants must pay a $100-per-claim maintenance fee on or before September 1 of each year to hold the claim for the assessment year which starts September 1, unless the claimant qualifies for the maintenance fee payment waiver certification (small miner's waiver).

New claimants whose location date is just prior to September 1, but whose 90-day filing deadline falls after September 1, must pay, at the time of recording, fees totaling $235 ($25 location fee, $10 service charge, $100 maintenance fee for the assessment year in which the claim is located and $100 maintenance fee to hold the claim for the assessment year that began on September 1).

If a claimant holds 10 or fewer claims nationally, and wishes to file for a small miner's waiver, the claimant must -- on or before September 1 -- submit $135 in fees for the current assessment year, plus a small miner's waiver for the forthcoming assessment year. The small miner's waiver must be filed on or before September 1. Assessment work is not required to be performed during the first year of location.

The location notice, one per claim or site, must be legible and contain complete information based on current legal references. Do not refer, for example, to historic mining districts when describing the claim's location.

If the mining claim is an association placer, the maximum acreage allowed is 160 acres with at least eight locators holding 20 acres per claimant. Claim areas within an association placer must be contiguous (30 USC 36); that is, the 20-acre parcels must be connected by the side or end lines. Parcels connected by corners are not considered to be contiguous. Examples of contiguous and noncontiguous parcels are shown in Figure F-6 on Page 155.

A corporation is considered an individual entity. Therefore, as an individual entity it is allowed 20 acres per claim. There is no limit to the number of individual claims that a corporation may hold.

When more than one claimant is listed on a location notice, names and addresses for each should be provided. It is to the benefit of claimants to sign the notice unless an agent or attorney is filing and signing the document for all concerned. In this case, an authorization should be filed with the BLM showing that the agent or attorney has been granted the right to act on behalf of the actual claimants.

Following are the required filing fees:

Activity	**New Charge**
New Location Notice (per claim/site) Service Fee	$ 10
Location Fee (per claim/site)	$ 25
Assessment Year Maintenance Fee (per claim/site)	$100
Amendments/Transfers of Ownership (per claim/site)	$ 5
Affidavit of Annual Assessment (per claim/site)	$ 5
Notice of Intent to Hold (per claim/site)	$ 5
Petition for Deferment of Assessment Work (per petition)	$ 25
Mineral Patent Application (first claim)	$250
Filing for each additional claim/site in one patent application (per additional claim/site)	$ 50
Mineral Survey Application (first mining claim/site)	$950
(each additional claim/site)	$375

For the most current information on fees and regulations, the claimant should consult with the BLM California State Office.

BLM Processing of Location Notices

In most cases, when a location notice is received in the State Office it is assigned a BLM serial number. This number must be used on all correspondence and documents filed with the BLM that relate to a particular claim or site.

Location notices filed with BLM are reviewed for completeness. If the information is not adequate, but the deficiency is curable (i.e., correctable by law), the claimant will receive a letter requesting clarification or additional information to be submitted within 30 days from receipt of the correspondence. Failure to respond may result in the issuance of a recordation rejection decision. If the claim appears to be within an area closed to mineral entry on the date of location, a decision will be issued declaring the claim or site null and void.

Examples of some curable deficiencies are noncontiguous placer mining claims, excess acreage on claims or sites, date of location not furnished, location notice not showing name or number for claim or site, legal description on the notice different from the map, or legal description not given at all, type of claim not indicated, and legibility problems. It is imperative that all documents be legible. Typed or printed documents are preferred.

Amended Locations and Relocations

An amendment to a location notice for a mining claim or site can be made (and filed) at any time with the appropriate county recorder and the BLM California State Office. It can be made on the same type of form as was used for the original location. An amendment is made where an amendable error has occurred or a clarification is needed. An amended location relates back to the original date that the mining claim or site was located. An amended location notice cannot be used to change the location date of a claim. An amendment is not necessary when title to the claim changes. When title changes, follow the procedures for a transfer of interest.

For more detailed information, *R. Gail Tibbetts, et. al.*, 43 IBLA 210 (1979); *American Resources Ltd.*, 44 IBLA 220 (1979); *Samuel P. Bar Sr.*, 65 IBLA 167 (1982); *R. Gail Tibbetts v. BLM*, 62 IBLA 124 (1982); and Cal. Pub. Res. Code, Chap. 4, Div. 2, Sec. 2310.

The fee required for filing an amended location notice with the BLM is $5 for each mining claim or site. The notice should be filed within 90 days of the date of the amendment. However, there is no penalty if the 90-day requirement is not met (*Leland H. Bray*, 37 IBLA 120 (1978)).

Some examples of where an amended location notice is proper are:

1. Claimant has reported original location in wrong township, range, or section.

2. The name of the claim is changed.

3. Incomplete data on original notice of location.

A relocation is a new location which covers the same or nearly the same land as a prior mining claim or site. The relocation is considered a new mining claim or site and requires a new location notice, new location date, and new location fees. It does not relate back to the date of the prior location (*Coates Lahusen*, 69 IBLA 137 (1982)). Relocation is necessary where a claimant has failed to timely pay the maintenance fee, file the small miner's waiver, record timely assessment work, or attempts to move a claim a significant distance from its original location. A claimant can relocate only if the lands remain open to mineral location and no one has located a claim during the period of time the land was "vacant" (for example, the date from failure to record an assessment work notice by the end of an assessment year to the date of relocation of a new claim).

Transfer of Interest (Quitclaiming)

A claimant of an unpatented mining claim, mill or tunnel site which has been properly recorded may transfer all or part of his or her interest in the claim/site. The proper vehicle to use is a quitclaim deed, not an amended location notice. The claimant may wish to include an amended location notice with the quitclaim deed, but it is not required.

The transfer document must be filed with both the appropriate county recorder's office and the BLM California State Office within 60 days after the transfer. The transfer will be deemed to have taken place on its effective date under State law. The document should include the claim name, the assigned BLM serial number, and the name and mailing address of all parties affected by the transfer. A $5-per-claim fee, for each claim listed in the document, is required for filing with the BLM.

Those claimants choosing to change ownership by filing a new location notice will be required to submit the $135 recording fee. It is not recommended that a new location notice be used to transfer interest. Problems may be encountered and rights lost when using a new date of location.

Abandonment or Relinquishment

If the claimant is abandoning or relinquishing a claim or a site, a letter to that effect should be submitted to the BLM California State Office and the appropriate county recorder's office. Be sure to give the BLM serial number in the letter. All current claimants who are abandoning their interests must sign the letter. No fees are required for this filing.

The Maintenance Fee Payment Waiver Certification form (Form FM-6 on Page 189) contains a block that can be checked to relinquish all claims or sites that are not being held for the forthcoming assessment year.

Deceased Claimant

To remove a deceased claimant from the BLM's recordation file, the following documentation is required:

1. Copy of the death certificate;

2. Copy of the will;

3. Copy of the court decree (only in cases where no will exists).

In cases of community property (husband and wife), if no will exists, the BLM will accept a notarized statement from the surviving spouse that they are now the sole owner of all community property, including the mining claims of record with the BLM.

In situations where there is no next of kin and no will, co-claimants must use the process of "publishing out" to remove the deceased claimant from the claim recording. Information on "publishing out" can be obtained from the BLM California State Office.

The filing fee for recording a title change based on the death of a claimant is $5 per claim or site.

MAINTENANCE FEE PAYMENTS, WAIVERS, ASSESSMENT WORK, AND APPROPRIATE AFFIDAVITS AND NOTICES

Introduction

To hold a possessory interest to a lode or placer (including any association placer) mining claim, at least $100 worth of labor must be performed or claim improvements made annually for each claim. This labor and/or improvement work is called assessment work. Where several contiguous claims are held by a claimant, the total expenditure necessary to hold all the claims (at $100 per claim) may be made on any one claim as long as all are benefited by the assessment work. Claims that touch on a corner are not considered to be contiguous (43 CFR 3851.1, *Jupiter Mining Co. v. Bodie Consolidated Mining Co.*, 11 F.Cas. 666 (1881), and *Powell v. Atlas Corp.*, 615 P.d 1225 (Utah 1980) and Figure F-6 on Page 155). Whatever is done for assessment work generally should be visible and certainly should directly benefit the claim(s) involved.

However, the Interior Department and Related Agencies Appropriations Act of 1993, Public Law 102-381 (106 Stat. 1374) of October 5, 1992, temporarily changed the requirements for the performance of assessment work and established payment of rental fees for fiscal years 1993 and 1994. It required that mining claimants holding mining claims and sites located on public lands of the United States shall, with certain exceptions, pay a rental fee of $100 per mining claim, mill site, or tunnel site in lieu of performing assessment work required under the Mining Law (30 USC 28-28e) and recording the affidavit of labor or a notice of intent to hold under Section 314 (a) and (c) of the Federal Land Policy and Management Act of 1976 (43 USC 1744[a] and [c]).

Public Law 102-381 expired on September 30, 1994. However, it was replaced by the Omnibus Budget Reconciliation Act of August 10, 1993 (P.L. 103-66, 107 Stat. 405), which required, with certain exceptions, a $100 annual maintenance fee for each mining claim and site located and held under the general mining laws. The fee requirements imposed by this Act were in effect through August 31, 1998. The claim maintenance fee was in lieu of the assessment work requirement contained in the Mining Law of 1872 (30 USC 28-28e) and the related filing requirements contained in Section 314 (a) and (c) of the Federal Land Policy and Management Act of 1976 (43 USC 1744[a] and [c]).

On October 21, 1998, Public Law 105-277 (H.R. 4328) was passed. This Act re-authorized the $100 annual maintenance fee requirement, with certain exceptions, through September 1, 2001, and changed the filing deadline from August 31 to September 1 for assessment years 1999 through 2001.

Maintenance Fees

Claimants holding more than 10 mining claims, mill sites, or tunnel sites must pay an annual, non-refundable maintenance fee of $100 for each mining claim or site to the BLM California State Office on or before September 1 of each year to hold the claim/site for the assessment year which starts on September 1 of each year. Failure to timely pay the maintenance fee will result in an abandonment of the claim or site by operation of law.

The assessment years covered by Public Law 105-277 (see LR-8a, Pages 293-300) begin at 12 o'clock noon on September 1, 1998, and end at 12 o'clock noon on September 1, 2001. The first payment to be due on or before September 1, 1999, with subsequent payments due on or before each September 1, through September 1, 2001. Payments for multiple years will be accepted.

Claimants holding 10 or fewer claims or sites also have the option of making the $100 per claim/site maintenance fee payment in lieu of filing for the small miner's waiver and performance of the assessment work. A waiver of the maintenance fee is discussed below.

Waiver of the Maintenance Fee

Congress has made one exception to the maintenance fee requirement. The Maintenance Fee Payment Waiver Certification (small miner's waiver) was established for miners who have 10 or fewer claims, mill sites and tunnel sites nationwide.

Those claimants and all related parties holding 10 or fewer claims and sites may, under certain conditions, file for a small miner's waiver from the maintenance fee requirement, and perform the assessment work required under 30 USC 28-28e and record it pursuant to Section 314(a) of FLPMA in lieu of paying the maintenance fee.

Any claims/sites held by a husband and wife, either jointly or individually, or their children under the age of discretion, shall be counted together toward the 10 claim limit.

(Note: Related parties means (1) the spouse and dependent children of the claimant as defined in section 152 of the Internal Revenue Code of 1986, or (2) a person who controls, is controlled by, or is under common control with the claimant. Control means, as defined in the Act of August 10, 1993, actual control, legal control, and the power to exercise control, through or by common directors, officers, stockholders, a voting trust, or a holding company or investment company, or any other means.)

In order to hold mining claims or sites, each small miner shall file a small miner's waiver on or before September 1 of each year to hold the claims for the assessment year beginning at 12 o'clock noon on September 1 of that calendar year.

The Maintenance Fee Payment Waiver Certification (Form FM-5 on Page 187) was developed to provide the public with a document which, when completed properly, contains all the statements and information required for a small miner waiver under the mining claim maintenance fee provisions.

Use of this form is not mandatory, but is highly recommended.

The small miner(s) shall certify that:

1. All claimant(s) hold no more than 10 mining claims, mill sites, and tunnel sites, in total, nationwide, on the date the payment of the maintenance fee is due September 1.

2. The assessment work requirements will be completed for the assessment year for which the waiver is filed. The assessment work document itself must be filed with the BLM California State Office by December 30, following the end of the assessment year, together with a $5-per-claim filing fee.

When a small miner's waiver is filed, assessment work **must** be performed for the assessment year for which the waiver is filed. The filing of the small miner's waiver does not in itself hold the claim; the assessment work must be performed and filed with the BLM to complete the process. For example, if a claimant applies for a small miner's waiver for the 1999 assessment year, the assessment work must be performed between September 1, 1998, and August 31, 1999, and the assessment work affidavit filed with the BLM by December 30, 1999.

Claimants do not need to maintain the "small miner" status throughout the entire assessment year for which the waiver is filed. A claimant must meet the "small miner" status on September 1 of each filing year. Any claims or sites located or acquired during the assessment year in excess of the 10 claim/site limit must be relinquished or transferred to other non-related parties prior to the next September 1, or the maintenance fees must be paid on **all** claims and sites on or before the next filing deadline.

Assessment Work Year and Filing Year

Each year after location, an affidavit of annual assessment work (proof of labor) must be filed attesting that $100 of assessment work was completed on each unpatented mining claim listed on the small miner's waiver. The request for waiver from payment of the maintenance fees must be filed with the BLM on or before September 1, of each year.

Assessment work must be performed within a certain time period referred to as the assessment year. The time period within which the work must be done begins at 12 o'clock noon of September 1, and ends at 12 o'clock noon on September 1, of the following year (see 43 CFR 3851.1, LR-10 Page 305). Assessment work need not be performed during the assessment year within which the claim is located (3833.2-2(a)). See the table below.

WHAT DO I NEED TO FILE IN MY FIRST YEAR OF LOCATION?

Scenario #1 (Claims located and filed with BLM prior to September 1st)

7-1-98	8-31-98	12-30-98
locates and files claim, pays $135 ('98 maint)	files '99 waiver	no '98 POL required as '98 maint paid at time of recordation; FLPMA filing of an NOI is required

Scenario #2 (Claims located on or after September 1st)

9-15-97	12-30-97	8-31-98	12-30-98
locates and files claim, pays $135 (1998 maint.)	nothing is due	files '99 waiver	no '98 POL required as '98 maint was paid at time of filing, however NOI is required

Scenario #3 (Claims located prior to September 1st but filed w/BLM after September 1st)

7-1-98	9-15-98	12-30-98	9-1-99	12-30-99
locates claim	claimant files w/BLM pays $235 ('98 & '99 maint.)	no '98 POL or NOI required (see scenario #1)	files 2000 waiver	no'99 POL required as '99 maint. was paid at recordation, however a NOI is required

**Remember: A waiver form can only be used as a NOI for a mill site or tunnel site.

An assessment work notice or a notice of intention to hold a mining claim must be filed in both the appropriate county recorder's office and with the BLM California State Office in the filing year for which it is performed. These annual filing documents must be recorded with the county by September 30, and with the BLM on or before December 30. Annual filings sent to the BLM can be postmarked on or before December 30, as long as the filing is received by January 14. Postmarks must be from the U.S. Postal Service or other authorized mail service, e.g., Federal Express.

In Figure F-7 on Pages 156-157, the Mining Claim Filing Requirements chart outlines, by assessment year, the actions required by a claimant to maintain a claim or site in active status with the BLM. Take special note that the requirements must be completed in advance of the assessment year for which the claim is to be held, i.e., filing deadline for the 2000 assessment year is September 1, 1999.

For claimants holding more than 10 claims/sites and claimants holding 10 or fewer claims/sites who have paid the $100 maintenance fee, the filing of an assessment work notice with the BLM is no longer necessary. A claimant may file an assessment work notice with the BLM after paying the maintenance fee. The BLM recommends that claimants file a proof of labor, assessment work form, or notice of intent to hold with the county for the following reasons:

1. Prevents breaks in the chain of title on the mining claim;

2. County maintains a permanent record;

3. Avoids potential conflicts with adverse claimants.

To file an assessment work notice with the county, complete the assessment work or proof of labor form with the following statement under the description of type of labor and improvements:

> MAINTENANCE FEE, AS REQUIRED BY 43 CFR 3833.1-5, HAS BEEN PAID TO THE BUREAU OF LAND MANAGEMENT FOR THIS ASSESSMENT YEAR PERIOD

A notice of intent to hold must be in a format acceptable to the county in which the claims are located. Check with your county recorder's office for an acceptable format.

The proper BLM office in California to file annual filings is the California State Office. Filings will not be accepted at any other BLM location. The fee for recording this document with the BLM is $5 for each claim listed. When completing the assessment work notice form be sure to include the correct claim name and the most recently assigned BLM serial number. This will ensure proper updating of the records.

Assessment Work Affidavit (California)

Form FM-7 on Page 191 shows an example of an Affidavit of Assessment Work (Proof of Labor). Item 1 is self-explanatory and requires the claimant to name the county in question and give the current assessment year and certain data on the claim for which work was done. Under "location," the part marked Sec./Tp./Rg./Mer. refers to section, township, range, and meridian. Be sure to give the BLM serial number and the name of the claim.

Item 2 is very important. Be sure to discuss clearly and adequately the type of labor and improvements done, the value (cost) of each, the total value of all labor and improvements made and the date(s) of performance. Note the statement regarding geological, geochemical, or geophysical surveys. If a report was prepared complete the title, the date that it was filed with the county recorder in question, and the costs involved under the headings "Description" and "Value." Complete the date(s) work was performed.

Item 5 is also very important. Make sure all your claim monuments are in place (Cal. Pub. Res. Code, Chap. 4, Div. 2, Sec. 2315(8) and (9)). Although the obliteration and destruction of the monuments and notices thereon does not affect the validity of the locator's possessory title (*Walton v. Wild Goose Mining Co.*, 123 F.Cas. 209 (1903, cert denied 194 US 631)), the BLM strongly recommends replacement of any required monuments that have been obliterated or destroyed and documenting on the proof-of-labor that all monuments were in place at the time assessment work was performed. Notes regarding the situation and photographs of the replaced monuments should be made and kept in the claimant's personal records.

Items 4 and 5 should be completed by printing or typing. Below Item 5, a signature of the claimant or the person responsible for the statements in the Notice is required. The claimant may perform the work or someone on his behalf may perform the work. The name of the person performing the work must also be included on the form.

Assessment Work

Claimants qualifying for a small miner's waiver must perform $100 worth of assessment work each year. This section discusses activities that will qualify as assessment work. The following examples are not meant to be complete, but are intended to include the most common types of work or improvement situations. If you have a question about qualification, contact an expert in your local BLM office and/or a mining attorney.

Types of Assessment Work That Will Qualify:

1. Construction and maintenance of access roads to mining claims. See *U.S. v. 9,947.71 Acres of Land,* 220 F.Supp. 328 (D.C. Nev. 1963), and *Pinkerton v. Moore,* 66 NM 11, 340 P.d 844 (1959).

2. Buildings for the purpose of benefiting the claim, and for its improvement. See *Bryan v. Mc Craig,* 10 Colo 309, 15 P. 413 (1887).

3. Buying of blasting supplies such as powder, fuses, wire and so forth. See *Fredricks v. Klauser,* 52 Or 110, 96 P. 679 (1908).

4. Digging of mine development works, surface or underground, that directly benefits the claim. See *James v. Krook*, 42 Ariz 322 (1933).

5. Installation of machinery or fixtures to facilitate the extraction of ore. See *James v. Krook*, 42 Ariz 322 (1933).

6. Services of a watchman where the services are necessary for the preservation of structures or other property used in developing the claim. See *Ingersolt v. Scott*, 13 Arz 165, 108 P. 460 (1910).

7. Development drilling and sampling. See *Eveleigh v. Darneille*, 81 Cal Reptr 301 (Cal App 1969).

8. Removal of overburden to allow surface mining of relatively shallow deposits. See *Ring v. United States Gypsum Co.,* 62 CA d 87 (1923).

9. Geological, geochemical, and geophysical surveys. The following material is from 43 CFR 3851.2 (30 USC 28-1-2).

   A. Such surveys must be conducted by qualified experts and verified by a detailed report filed in the county or recording district office in which the claim is located. This report must fully set forth the following:

   (1) Location of the work performed in relation to the point of discovery and boundaries of the claim;

   (2) Nature, extent and cost of the work performed;

   (3) Basic findings of the surveys;

   (4) Name, address and professional background of the person or persons conducting the work.

   Such surveys may not be applied as labor for more than two consecutive years or for more than a total of five years on any one mining claim. Each survey shall be non-repetitive of any previous survey of the same claim.

   Such surveys will not apply toward the statutory provision requiring the expenditure of $500 for each claim for mineral patent.

B. As used in this section:

(1) The term "geological surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits;

(2) The term "geochemical surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of chemistry as they relate to the search for and discovery of mineral deposits;

(3) The term "geophysical surveys" means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods for measuring physical differences between rock types or discontinuities in geological formations;

(4) The term "qualified expert" means an individual qualified by education or experience to conduct geological, geochemical, or geophysical surveys, as the case may be.

Types of Assessment Work That Will Not Qualify

1. A building that does not benefit the claim (see No. 2 above).

2. Prospecting for exploration and discovery: in contrast to development work, which does qualify, *Bishop v. Baisley*, 28 Or 119, 41 P. 936 (1895); *Schlegal v. Hough*, 182 Or 441, 186 P. d 516 (1947); *Schlegal v. Hough*, 182 Or 449, 188 P.d 158 (1947) modifying 182 Or 441, 186 P.d 516 (1947). Note, however, that sampling, discovery shafts, exploratory drilling, and prospect holes have been accepted as qualified work. *Eveleigh v. Darneill*, 276 Cal. App. D 638, 81 Cal Reptr 301 (1969) (hand sampling of the least meaningful kind); *Sampson v. Page*, 129 Cal. App. d 356, 276 P.d 871 (1954); *Hamilton v. Ertl*, 146 Colo 80, 360 P.d 660 (1961) (core holes); *Nevada Exploration and Mining Co. v. Spriggs*, 41 Utah 171, 124 P. 770 (1921); *Simmons v. Muir*, 75 Wyo 44, 291 P.d 810 (1955); *Walton v. Wild Goose Mining and Trading Co.*, 123 F.Cas. 209 (9th Cir., 1903).

   It is clear that prospecting and exploration work for assessment purposes can be a subject of confusion and real concern, except where "geological, geochemical, or geophysical surveys" are involved (see No. 9 above). BLM advises claimants to seek the advice of a mining attorney on this very important matter.

3. Services of a watchman where the services are not necessary for the preservation of structures and other properties (see No. 6 above).

4. Materials taken to a mining claim but not used. (*Fredricks v. Klauser*, 52 Or 110 P. 679 (1908)).

5. Gathering and removing ore previously mined. (*Buckeye Mining Co v. Powers*, 257 Pac 833 Ida (1927)). For loading and shipping ore stockpiled during previous assessment year, see *Smith v. Daily*, 181 CA d 154 (1960).

Intention to Hold a Mining Claim or a Mill or Tunnel Site

The following definitions for notices of intention to hold mining claims and sites are found in 43 CFR 3833.0-5:

> "Notice of intention to hold a mining claim" means an instrument containing the information required in 3833.2-5 of this title which has been or will be filed under state law in the local jurisdiction indicating that the owner continues to have an interest in the claim.
>
> "Notice of intention to hold a mill or tunnel site" means an instrument containing the information in the form required in 3833.2-5 of this title indicating that the owner continues to hold an interest in the site.

By definition, the major difference between the notices of intent is that if the notice is for a mining claim, it must be recorded in the proper county recorder's office, while county recording is not mandatory for a notice of intention to hold a mill or tunnel site. Both documents, however, must be filed in the California State Office of the BLM during the same time period as for the assessment work notice. All notices must contain the BLM serial number assigned to the claim or site, and any change of address of the claimant.

The filing fee per document filed with the BLM is $5 per claim or site, and is due by December 30 of each calendar year. All claims affected on the notice of intent to hold must be included on the small miner's waiver filed with the BLM by September 1 of that same year.

If a claimant has filed for and been granted a deferment of assessment work, the notice of intention to hold the mining claim should reference the decision document by date and the BLM serial number assigned to the deferment of assessment work request, or reference a pending petition for deferment of assessment work.

Since assessment work is not required to be done on a mill or tunnel site, a notice of intention to hold a mill or tunnel site is the proper document to file if a claimant intends to keep the site after meeting the September 1, filing deadline for a small miner's waiver. If the $5 service fee is paid at the time of the filing of the small miner's waiver, the waiver form alone will serve as the notice of intent to hold for any mill or tunnel site(s) listed on the waiver. The filing of a notice of intent to hold applies only in those situations where the claimant, and any related parties, holds 10 or fewer claims and/or sites.

Changing Filing Status

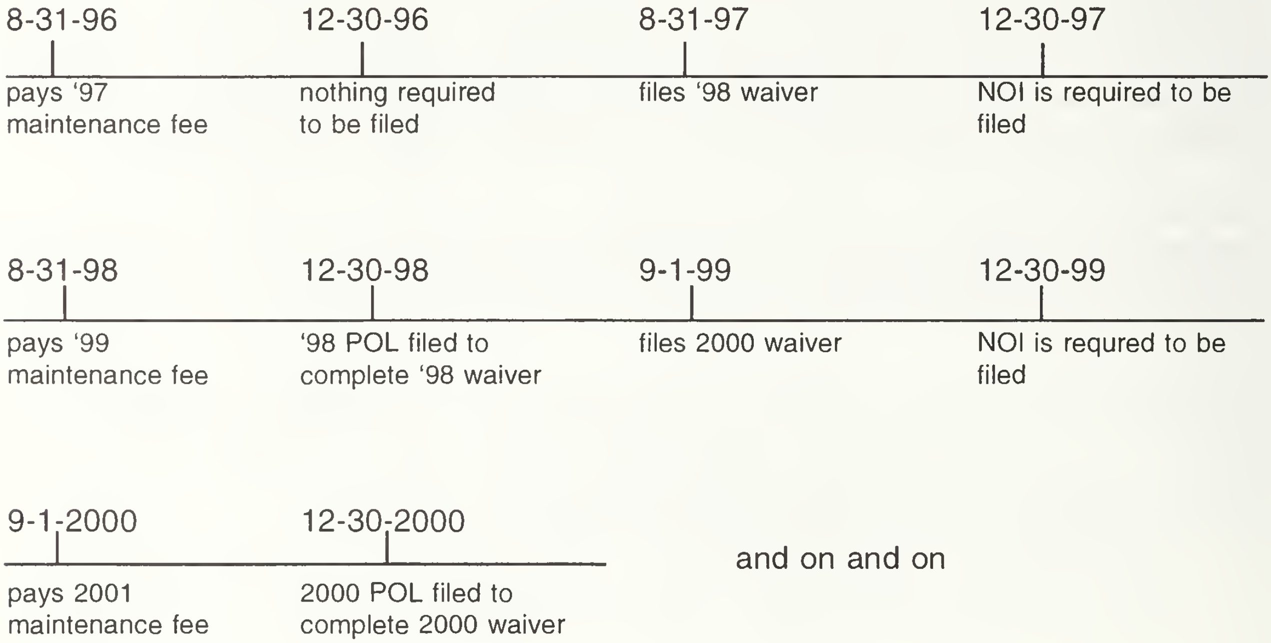
The filing status of a claimant may change over the years. For example, a claimant owning more than 10 claims may have reduced the number of claims held to 10 or fewer and desire to switch from the maintenance fee payment to a small miner's waiver.

The reverse situation may also occur. A claimant owning 10 or fewer claims, who has previously filed for a small miner's waiver, may choose to pay the maintenance fee instead of continuing to file for a small miner's waiver.

Care must be taken when switching from one option to another because of the varying deadlines involved. Instructions for switching are detailed below:

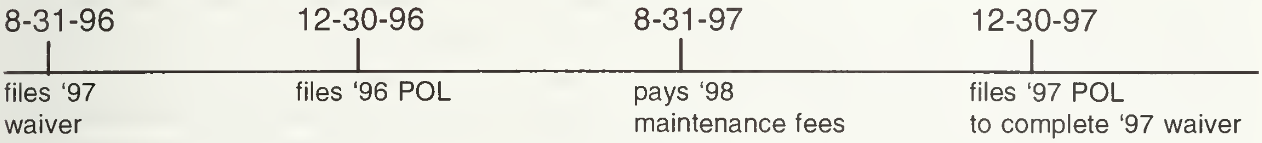
Maintenance Fee Payment to Waiver

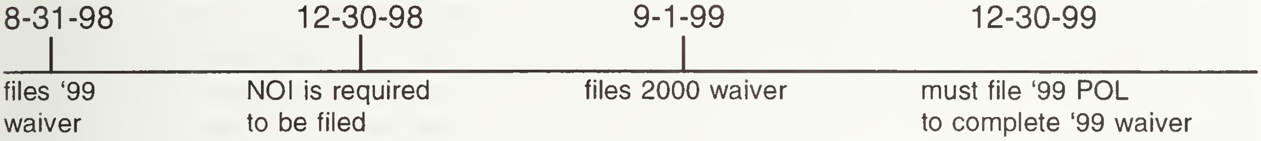
The diagram below shows what happens when a claimant pays maintenance fees one assessment year and switches to a small miner's waiver the next year.


8-31-96
pays '97 maintenance fee
12-30-96
nothing required to be filed
8-31-97
files '98 waiver
12-30-97
NOI is required to be filed
8-31-98
pays '99 maintenance fee
12-30-98
'98 POL filed to complete '98 waiver
9-1-99
files 2000 waiver
12-30-99
NOI is requred to be filed
9-1-2000
pays 2001 maintenance fee
12-30-2000
2000 POL filed to complete 2000 waiver
and on and on

Waiver to Maintenance Fee

A claimant can choose to begin paying the maintenance fee on his or her mining claims/sites at any time as long as the fee is received by September 1, of each year for the assessment year that begins on September 1. See the diagram below for an example.


8-31-96
files '97 waiver
12-30-96
files '96 POL
8-31-97
pays '98 maintenance fees
12-30-97
files '97 POL to complete '97 waiver


8-31-98
files '99 waiver
12-30-98
NOI is required to be filed
9-1-99
files 2000 waiver
12-30-99
must file '99 POL to complete '99 waiver

Failure to Perform Assessment Work and Maintenance Fee Filing Requirements

Failure to pay maintenance fees, file a small miner's waiver, or perform proper assessment work on a claim/site, will render the claim/site subject to cancellation and/or relocation. If the September 1, annual filing requirement is not met, it "shall be deemed conclusively to constitute a forfeiture of the mining claim or mill or tunnel site by the claimant." For those claimants filing a small miner's waiver, failure to file the required assessment work affidavit by December 30, following the assessment year the small miner's waiver was filed for will constitute an abandonment of the claim.

Under California State law, a claim may be relocated by other claimants unless the original locator, his heirs, assigns, or legal representatives have resumed work after a failure to perform assessment work and before a new location by other claimants is made (see 43 CFR 3851.3, LR-10 Pages 305-308) as long as the lands remain open to the location of mining claims. It can be difficult for a new locator to show that an original locator did not perform the required improvements or work during the assessment year. Relocation cannot be made until after the end of the assessment year in question.

Failure of a Co-Claimant to Contribute to Assessment Work or Maintenance Fee

Regulations at 43 CFR 3851.4 address the failure of a co-owner to contribute to annual assessment work or maintenance fee payment in lieu of assessment work. Section 3851.4a is given below.

> Upon the failure of any co-owner of a mining claim or mill or tunnel site to contribute the proper proportion of the required expenditures, the co-owners who have performed the labor, made improvements, paid the maintenance fee required under 3833.1-5 and 3833.1-6 of this title, may, at the expiration of the assessment year, give such delinquent co-owner personal notice of this failure in writing. Alternatively, this notice may be given by publication in the newspaper published nearest the claim for at least once a week for 90 days. If, upon the expiration of 90 days, after such notice in writing, or upon the expiration of 180 days after the first newspaper publication of notice, the delinquent co-owner shall have failed to contribute the proportionate share of such expenditures or improvements, such interest in the claim by law passes to the co-owners who have made the expenditures or improvements.

Affidavits of Assessment Work for Claims Under Patent Application

Payment of maintenance fees, an affidavit of assessment work, or a notice of intention to hold a mining claim or mill site need not be filed after the date that Part I of BLM Form 1860-1, Mineral Entry Final Certificate is signed by the Secretary of the Interior See 43 CFR 3833.2-6, LR-8 Pages 283-292 and 3851.5, LR-10 Pages 305-308.

Deferment of Assessment Work

The Act of June 21, 1949 (30 USC 28b-c), allows the Secretary of the Interior to grant temporary deferments of assessment work. There are four circumstances under which these temporary deferments may be granted:

1. When access to the mining claim is being denied;
2. When access to the claim is in litigation;
3. When access to the mining claim is in the process of acquisition under State law; or
4. When any other legal impediment prevents the mining claimant from entry to perform assessment work.

The key words are "access to the claim is denied." Unless a claimant can prove that access to the claim is denied, a deferment cannot be granted.

Deferments may not be granted for reasons such as the following: physical conditions such as the washout of roads, unseasonable weather, illness, bankruptcy proceedings, and litigation, such as a court order that enjoins the claimant from entering the claim, or the closing of the area to mining by a Federal agency.

Regulations in 43 CFR 3852.2 state the requirements for filing a petition for a deferment of assessment work. No specific form is required. The petition can be in letter form signed by at least one of the claimants of the claim. Be sure to give the name of the claim involved, the date of claim location, the BLM mining claim serial numbers, and the date of the beginning of the assessment work year for which deferment is requested. Each petition must be accompanied by a $25 nonrefundable service charge. It must be filed with the BLM California State Office and be accompanied by a copy of the county- recorded "notice to the public." The petitioner must fully describe the "legal impediments" preventing access to the claim. Deferments may be granted for no more than one year for two successive years and the deferred assessment work must be completed not later than (1) the end of the assessment work year commencing after the removal or cessation of the causes for deferment, or (2) the expiration of the period for which deferment was granted, whichever is first. If the causes for deferment exist after two years, relief may be available through judicial litigation.

Payment of the maintenance fee for mining claims covered by a deferment of assessment work granted by an authorized BLM officer may be deferred during the period for which the deferment is granted.

If a petition for a deferment of assessment work is filed on or before September 1 for a given year, the maintenance fee need not be paid on the claims listed in the petition for deferment until the authorized officer has acted upon the petition.

If the petition is granted, maintenance fees for the claims are deferred for the upcoming assessment year. At the expiration of the deferment, all deferred fees shall be paid within 30 days, unless the claimant qualifies as a small miner. If the claimant qualifies as a small miner, all deferred assessment work shall be performed upon expiration of the deferment.

If the petition for deferment is denied, the maintenance fees shall be paid within 30 days of receipt of a decision denying the petition for deferment. Failure to pay the maintenance fees will result in the forfeiture of the claims in the petition.

Claimants Filing Small Miner's Waivers in Units of the National Park System

In 1976, the Mining in Parks Act (16 USC 1901 *et seq.*) withdrew all current and future units of the National Park System from mineral entry. The Act also gave the National Park Service (NPS) explicit authority to regulate mineral development activities on both patented and unpatented mining claims within units of the National Park System. On October 31, 1994, the California Desert Protection Act of 1994 was enacted (PL 103-433; 108 Stat.

4471; 16 USC 410aaa *et seq.*). This Act added vast new acreage to the National Park System in the California Desert Conservation Area. Such lands have many mining claims and sites on them.

Claimants who wish to obtain a small miner's waiver from the maintenance fee and who hold mining claims, mill sites, or tunnel sites in units of the National Park System must comply with (NPS) regulations at 36 CFR Part 9, Subpart A, in addition to the BLM regulations. An explanation of the interface between the relevant BLM and NPS regulations was published in the Federal Register of Monday, January 22, 1996, (61 FR 1600).

Pursuant to 36 CFR § 9.7, the NPS cannot approve surface-disturbing activities on NPS lands solely for the purpose of performing annual assessment work. As a result, claimants who would normally qualify for the small miner's waiver if they own 10 or fewer claims and sites combined, who seek to conduct surface disturbing activities solely for the purpose of fulfilling the $100 annual assessment work requirement, will not be allowed to do so by the NPS. Instead, they will be required to pay the $100 maintenance fee to the BLM. However, claimants who would normally qualify for the small miner's waiver, and who seek to conduct surface-disturbing activities on NPS lands for broader purposes, such as delineating their mineral deposit or commencing development of their claims, will be allowed to do so by the NPS and will not have to pay the $100 maintenance fee, provided that they:

1. Submit a plan of operations to the NPS for approval that fulfills the information requirements at 36 CFR § 9.9.

   Before becoming eligible for a small miner's waiver from the annual maintenance fee in a park unit, a person or entity seeking the waiver must first submit and obtain NPS approval of a complete plan of operations. The completeness determination of a plan of operations rests with the NPS, not with the claimant or operator. To be considered complete, a plan of operations must contain the elements described in 36 CFR § 9.9. Such elements include specific descriptions of the intended mineral development work, likely environmental effects, routes of access to and from the claim, equipment to be used, a timetable of work, reclamation, and other aspects of the intended work. Advance approval of the plan of operations is vital to the NPS's ability to carry out its mission to preserve units of the National Park System for current and future generations.

2. Obtain NPS approval of their plan in conformance with the standards at 36 CFR § 9.10. In such cases the work performed under the approved plan of operations will also fulfill the $100 annual assessment work requirement.

Approval by the NPS of a claimant's plan of operations may take more than 60 days. The reason is that NPS cannot approve a plan of operations without first determining the validity of the unpatented mining claims, mill sites, or tunnel sites included in the plan. The NPS is required by the California Desert Protection Act of 1994 (P.L. 103-433, 108 Stat. 4471, 16 USC 410aaa et seq.) to verify the validity of claims in Mojave National Preserve. In all other units of the National Park System, the NPS performs validity examinations based on its interpretation of Congressional intent as set forth in the Mining in the Parks Act of 1976 (16 USC 1901 et seq.).

No mineral development work may occur on unpatented mining claims, mill sites, or tunnel sites on park units until (1) The NPS determines that the plan of operations submitted by a miner is complete, (2) the NPS determines that the claims, mill sites, or tunnel sites included in the plan of operations are valid, (3) the NPS approves the plan of operations, and (4) the claimant posts a reclamation bond with the NPS. Upon completion of the requirements, a claimant may proceed with the mineral development work. To qualify for the small miner's waiver, the BLM regulations require this work to be completed and a waiver certification to be filed with the BLM on or before each September 1.

If claimants seeking a small miner's waiver for the upcoming year will not be able to conduct the mineral development work and file the waiver prior to September 1 because of the NPS's need to conduct a validity examination, such claimants may apply to the BLM for a deferment of assessment work. As part of the application, claimants must present a letter to the BLM from the NPS as a testament to their having submitted to the NPS a complete plan of operations before September 1. Specifically, the letter from the NPS must state the following: (1) the NPS finds the claimant's plan of operations complete; (2) the NPS cannot act on the plan until the NPS conducts a validity examination of the claim; and (3) the NPS anticipates completing the validity examination after August 31.

The decision of whether to grant a deferment of assessment work rests with the BLM, not the NPS.

Claimants interested in waiving the fee are urged to begin the process early by reviewing the NPS requirements for a plan of operations and submitting a complete plan of operations to the appropriate NPS park superintendent as soon as possible.

Claimants who have any doubts that the BLM will consider them eligible for the small miner waiver, or who, for any reason, are unable to complete the steps described above or in the BLM regulations on or before each September 1 are advised to pay the annual maintenance fee for each mining claim, mill site, or tunnel site. Otherwise, such claimants risk forfeiting the mining claims, mill sites, or tunnel sites.

MINING AND RECLAMATION PLANS

Introduction

Before exploration and mining operations begin on BLM or USFS administered lands, the claimant should contact the local field office of the appropriate agency for information and instruction. Both agencies have surface management regulations that may require a notice, a plan of operations, and reclamation bonding, depending on the level of disturbance or special management designation of the land.

The USFS requires a notice of intent to mine which may lead, after consultation with the claimant, to a plan of operations. Each proposal is reviewed on a case-by-case basis, to consider the size and significance of potential disturbance. The BLM has two levels of notification:

1. A notice is required for five acres or less of disturbance; and

2. An approved plan is required for surface disturbance that exceeds five acres.

The USFS surface management regulations are in the Code of Federal Regulations (CFR) at 36 CFR 228(A). The BLM regulations are at 43 CFR 3802 for Wilderness Study Areas, and 43 CFR 3809 for all other areas.

Table T-1 on Page 131 shows topics covered by the BLM and USFS regulations and where the interested reader can find appropriate information.

Preparation and Review of Plans of Operation

The claimant should prepare a mining and reclamation plan from a practical viewpoint, to ensure that the proposal makes sense to the reviewing agency. A plan should contain data on ore grade, reserves, mining methods, and other activities that are involved with development of the mining operation. In most mining operations a normal sequence of events is (1) government permitting, (2) exploration, (3) economic evaluation, (4) facility construction, (5) mining, and (6) final reclamation. Each event is usually dependent on the success of the previous stage.

It is important to discuss reclamation in your plan. The government agency is interested in what the land can be used for, and what it will look like following the conclusion of the mining operation. The reclamation plan may include a discussion of the following topics:

1. Saving of topsoil for final application after reshaping of disturbed areas;

2. Measures to control erosion, landslides and water runoff;

3. Measures to isolate, remove, or control toxic material;

4. Rehabilitation of fisheries and wildlife habitat;

5. Removal of all man-made objects such as structures, roads, fences, pipe lines, power lines, etc., at the conclusion of mining;

6. Reclamation bond calculations.

Bonding Policy

Present policy of the BLM requires reclamation bonding for all plan-level operations. Plan-level operations are mining operations that cause more than five acres of surface disturbance per year, or occur in certain special areas. Non plan-level operations (notice-level operations) have five acres or less of unreclaimed disturbance per year, and are not affected by this policy except in cases of noncompliance. Notice-level operators who establish a record of noncompliance with BLM surface management regulations must conduct all future operations under an approved plan of operations and post a reclamation bond.

Operations with a Record of Compliance

All plan-level operations with a record of compliance with the BLM reclamation requirements, but with no State bonds, will be required to post a bond with the BLM. The bond will be set at the BLM's estimated cost to reclaim the surface disturbance, not to exceed $1,000 per acre for exploration activities or $2,000 per acre for mining operations. Operators will not be required to post additional bonds with the BLM if they can demonstrate the existence of a State bond that is within 75 percent of the BLM's estimated reclamation costs or the BLM's bond requirements. When an operator's State bond is not within the 75 percent range, the BLM field officials will have the option of requiring an additional bond to make up the difference.

Operations with a Record of Noncompliance

Notice-level operations with a history of noncompliance with BLM's surface management regulations will be required to post bonds with BLM for 100 percent of the estimated reclamation costs. A State bond cannot be used to fulfill any part of this requirement.

Operations Using Cyanide

Operations that use cyanide or other leachates on heap leach pads or dumps or that discharge cyanide bearing tailing or fluids to impoundments or tailings ponds will be required to post a 100 percent bond for those portions of the operation encumbered by such facilities. Either State or Federal bonds or a mixture of both will be accepted. All other portions of the operations will be subject to the same bonding requirements as any other plan-level operation.

Other Agencies

In addition to Federal regulations, the claimant will be required to comply with certain California State and local government regulations. For example, if any mining waste might contaminate surface or underground waters in the State of California, the claimant should contact the appropriate Regional Water Quality Control Board. See S-4 on Pages 225-226. Suction dredging permits are required by the State Department of Fish and Game and the claimant should contact their nearest Fish and Game office for regulations and instruction. See S-5 on Page 227. The Corp of Engineers also have suction dredging requirements that must be met. See S-6 on Pages 229-232. Counties have jurisdiction over such matters as sewage treatment and building construction, and in most cases administer the requirements of the California State Surface Mining and Reclamation Act (SMARA) .

Federal agencies and the counties work closely to coordinate the environmental review process in accordance with the National Environmental Policy Act (NEPA), the California Environmental Quality Act (CEQA), and the SMARA. Most surface mining operations in California are affected by the SMARA.

The BLM, USFS, and the county in question share responsibility for ensuring compliance with reclamation requirements on public lands in accordance with an October 20, 1992, Memorandum of Understanding (MOU). Key areas of cooperation are:

1. Developing individual MOUs for large surface mining operations;

2. Conducting inspection and enforcement activities;

3. Bonding;

4. Eliminating duplication whenever possible.

Exempt from SMARA regulations are the following activities:

1. Prospecting for, or extraction of, minerals for commercial purposes and removal of overburden in total amounts of less than 1,000 cubic yards in any one location or the disturbance of one acre or less;

2. Surface mining operations that are required by Federal law in order to protect a mining claim, such as annual assessment work, if such operations are conducted solely for that purpose;

3. Other surface mining operations which the State has determined to be of an infrequent nature and which involve only minor surface disturbances.

Mining Claims in BLM California Wilderness Areas

The California Desert Protection Act (PL 103-433, 108 Stat 4471; 16 USC 410aaa et seq.) created large areas of BLM and National Park Service (NPS) Wilderness. The Act also created smaller areas of Wilderness to be administered by the U.S. Forest Service and the U.S. Fish and Wildlife Service. In many cases, Congress extended Wilderness over areas not even studied by BLM for Wilderness under Sections 202 or 603 of FLPMA. These areas contained Notice level operations under 43 CFR 3809 as well as Plans. In order to effectively discuss our policies and approach, we will subdivide the policy by land status and level of operations currently outstanding. The emphasis is concurrently on protection of rights and minimization of surface disturbance activities in Wilderness Areas.

Based upon the 9th Circuit's holding in Northern Alaska Environmental Center et.al. vs Manual Lujan et. al., 872 F. d 901, 907 (1989), it is permissible to subdivide and process the activities occurring into groups based upon level of activity and existing proof of a valid existing right (VER), and then work the groups based on a standard priority basis until all groups have been examined, and valid existing rights recognized or contested. There is no time frame attached to this process. However, for BLM there are time frames associated within 43 CFR 8560 for plans of operations filings (30 days) under 43 CFR 3809 in Wilderness Areas.

Group One - Claims and Sites with no Existing Plans or Notices. This group is defined as claims and sites with no current activity and no existing plans or notices. Action will only be taken on these claims and sites when the operator or claimant comes forward with a proposal under 43 CFR 3809. At that time, pursuant to 43 CFR 8560.4-6, a validity examination will be performed within 30 days to determine if a VER exists. If it does, then pursuant to 43 CFR 3809, 8560.4-3 and 8560.4-6; a plan of operations can be approved. If no VER, then pursuant to 43 CFR 8560.4-6, the plan shall be denied and a mineral contest issued against the claims and sites through the BLM State Office.

Group Two - Claims and Sites with Existing Notices under 43 CFR 3809. Notices under 43 CFR 3809 that are in existence will be revoked and a plan of operations will be required of the operator or claimant under 43 CFR 8560.4-6. A VER determination is required prior to plan approval. If no plan is presented for consideration, place them into Group One above and require final reclamation of the operator or claimant. However, if the notice covered a producing mine, the production establishes a prima facie case of validity, and the plan if otherwise acceptable to the authorized officer, shall be approved and the operation placed into Group Five below, subject to the right of the BLM to conduct a validity examination at a later date for a formal determination of VER.

Group Three - Claims and Sites with Existing Plans under 43 CFR 3809 for Exploration Activities. Existing plans of operation issued pursuant to 43 CFR 3809 for exploration activities (not for producing mines, see Group Five below) are to be suspended until a VER determination can be accomplished by a certified mineral examiner. If a VER is verified, a plan modification can be put into place. If VER cannot be verified, then a mineral contest against the claims/sites shall be issued by the State Office.

Group Four - Claims and Sites with Existing Plan under 43 CFR 3802. Existing plans of operations issued pursuant to 43 CFR 3802 are more stringent than those required under 43 CFR 3809 and the Wilderness Act. These can remain in place until resources (a certified mineral examiner) are available to determine VER. If a VER is established, then the existing 3802 plan can be modified to a 3809 plan that conforms to the requirements of the California Desert Protection and Wilderness Acts. If a VER cannot be established, then a mineral contest action shall be issued against the affected claims/sites.

Group Five - Claims and Sites with Producing Mines and Existing Plans under 43 CFR 3802 or 3809. This group is restricted to operating mines under existing plans of operations, extracting and marketing ores and related commodities from their mining claims and sites. In these circumstances there is a prima facie case of valid mining claims and sites. Operating plans associated with these are a last priority for a VER determination, as a VER is presumed by the acts of mining and marketing from the claims and sites. However, you may still require a plan modification if needed to meet the requirements of the California Desert Protection and Wilderness Acts, subject to the right of the BLM to make a formal VER determination at a later date.

Priority of Actions. Mineral examinations will be conducted by a certified mineral examiner in the priority order of Groups one, three, two, four, and five. Plan processing, conversions, modifications, and upgrades by District personnel will be in the order of Groups one, five, four, two, and three.

Mining Claim Occupancy

The BLM and USFS are often asked by miners if they may live on their claim. Occupancy is allowed only if the claimant is diligent and engaged in activities that are reasonably incident to mining and milling operations. These may include prospecting, exploration, extraction, and processing on a regular basis. Before planning to live on, or construct buildings on a mining claim or mill site, first submit your plans to the local BLM or USFS office for their review and approval. The BLM field office will review your plan under regulations found at 43 CFR 3809 (LR-5b on Pages 267-274) and 43 CFR 3715 (LR-2 on Pages 247-252).

43 CFR 3715.2 lists those activities that may be reasons for your occupancy:

1. Be reasonably incident;

2. Constitute substantially regular work;

3. Be reasonably calculated to lead to the extraction and beneficiation of minerals;

4. Involve observable on-the-ground activity that BLM may verify;

5. Use appropriate equipment that is presently operable.

At 43 CFR 3715.0-5 certain important terms are defined. See LR-2 on Page 247. Become familiar with these terms.

Manuals, Handbooks, Instruction Memoranda, Guidance

The following documents may be obtained at BLM offices or other applicable agency:

BLM Manual Handbook H-3042-1 - Solid Mineral Reclamation Handbook - Provides general BLM guidance for administration of mining operations on BLM lands.

California Cyanide Management Plan 1992 - Provides both the mine operator and BLM technical staff with standards for development of mining projects that use cyanide.

WO IM No. 90-582 (8/14/90) - Modification of the Bonding Policy for Plans of Operation - Mandates reclamation bonding for all mining activities requiring a plan of operation.

WO IM No. 90-566 (8/6/90) - Cyanide Management Policy for Activities Authorized Under 43 CFR 3802/3809 - Provides guidance to ensure that operations which use cyanide are conducted in a manner which protect humans, wildlife and the public lands.

Wilderness Act of 1964; P.L. 88-577 - Provides guidance on mineral activities in federally administered areas designated by Congress as wilderness areas.

CA IM No. 92-211 (4/7/92) - "When a Plan of Operations is Required Within a Wilderness Study Area" - Provides clarification as to when a plan of operation is required or not required within California wilderness study areas.

WO IM No. 90-59 (10/23/89) - "Revised Inspection Policy" - Promotes the use of consistent inspection frequency, policies and practices by BLM personnel.

CA IM No. 95-165 (7/24/95) - "Endangered Species Act Compliance on Mining Notices" - Provides general BLM guidance as it relates to the protection of endangered and threatened species in California under Section 7 of the Endangered Species Act of 1973.

CA IM No. 91-192 (4/23/91) - "Environmental Documentation and Other Considerations for Surface Mining Operations" - Provides guidelines to BLM's environmental review procedures.

Federal Land Policy and Management Act (FLPMA); P.L. 94-579. Section 302(b) - FLPMA directs that in managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands from activities authorized by the mining laws.

National Environmental Policy Act (NEPA); P.L. 91-190 - Requires environmental analysis (EA or EIS) of Federal actions, including analysis prior to approval of a plan of operations.

Migratory Bird Treaty Act (MBTA); 16 USC 701 et seq. - Prohibits the taking of migratory birds. Applies to indiscriminate killing of migratory birds in process ponds.

Resource Conservation Act of 1976 (RCRA); 42 USC 6901 et seq. - Regulates solid and hazardous wastes disposal.

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended; 42 USC 9615 - Directs response and clear-up actions at sites where hazardous substances have been released. Also requires notification, when extremely hazardous substances are used on site.

Safe Drinking Water Act; P.L. 93-523 (December 1974) - Enacted to protect groundwater and drinking water sources. Set primary standards with maximum containment levels (MCL) and secondary standards.

Water Quality Act of 1987; 33 USC 1251 - Controls point and nonpoint sources of pollution.

Surface Management Under the General Mining Laws; BLM Regulations 43 CFR 3809 - Requires mining operators to file a notice or plan of operations for mining activities on BLM-administered land.

Surface Management Under the General Mining Laws; BLM Regulation 43 CFR 3802 - Provides guidance for administration of mining operations in Wilderness Study Areas.

Surface Exploration, Mining and Reclamation of Lands; BIA Regulation 25 CFR 216 - Requires operators on Indian lands to file a mining plan with the Mining Supervisor of the U.S. Geological Survey and obtain his approval. This duty was transferred from the USGS to the BLM during the 1982 merger.

Surface Management; BLM Manual 3809 - Provides general BLM guidance for administration of mining operations on BLM-administered lands.

PATENTING A MINING CLAIM

MINERAL PATENT APPLICATIONS

Note

On October 21, 1998, the President signed the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 (H.R. 4328, Public Law 105-277) that prohibits spending appropriated funds for the acceptance or processing of mineral patent applications that had not yet received First Half Final Certificate (FHFC) or were not in Secretarial review of FHFC on or before September 30, 1994. No new mineral patent applications may be accepted by the BLM. Existing applications on file and not grandfathered under this Act are not to be worked on. In addition, no new documentation or money is to be accepted for such applications. This is a continuation of the FY 1998 moratorium and is effective from October 1, 1998, through September 30, 1999, and will be extended as provided in any future legislation. The moratorium has been in effect since October 1, 1994.

Introduction

Lode and placer mining claims may be patented if certain requirements are met. A patent is a document which conveys fee title. In the case of mining claims, it usually conveys title to the surface as well as the minerals. Two basic requirements for patenting are that $500 worth of improvements have been made for the benefit of each claim, and that a discovery exists on each claim. The patenting process can be complex, expensive and lengthy. If you are considering applying for a patent read this handbook carefully, and if possible visit the California State Office of the BLM in Sacramento where you can view case files for claims that have been patented, and talk to knowledgeable personnel. This visit can give you an idea of completed and approved information and documentation on patented claims. Mill sites may also be patented. However, their validity depends largely on their nonmineral-in-character nature and their proper use. Tunnel sites cannot be patented.

Some of the more important requirements regarding the patenting of mining claims are addressed in Title 43 of the Code of Federal Regulations See LR-11 on Pages 309-314.

The mineral patent application consists of statements, documentation, and proofs relative to each individual claim. Since no two claims are exactly alike because of background, geology, mining methods, title, etc., preprinted forms are not practical to use. Most of the documentation required will be in the form of a narrative statement made by the applicant. The application consists of three main parts -- the initial filings which must be submitted to constitute a preliminary application for patent, subsequent filings which the applicant will be asked to furnish at the proper time during the application process, and the post-publication filings which the applicant will be asked to submit after the 60-day publication period.

The application and all supporting statements must be signed in the land district (State of California), and submitted **in duplicate**. Proof of citizenship need not be signed in the land district. Individual applicants must sign the application, except that if a claimant is not a resident or is absent from the land district, the application must be signed by an attorney-in-fact within the land district. Evidence of authority to sign should be submitted if the application is signed by someone other than the claimant, i.e. (a) attorney or agent evidenced by an original or a certified copy of the power of attorney, and (b) for corporations evidenced by an original resolution or a certified copy of a resolution by the Board of Directors' appointing or authorizing the proper official to sign.

The application must be accompanied by a nonrefundable filing fee -- $250 for the first mining claim or mill site, and $50 for each additional mining claim or mill site. The claims applied for within each application must be contiguous; that is, lie adjacent to one another and contact on a side. Claims touching at a corner only are not considered contiguous.

Pre-Application Requirements

Before filing a mineral patent application, the applicant must post, in a conspicuous place upon the claim, in the presence of two credible witnesses (1) a plat of a Mineral Survey, if applicable, and (2) a Notice of Intent to Apply for Patent. See LR-11 Pages 309-314, 43 CFR 3861.7-2. Conspicuous is defined as "open to view, obvious to the eye, easy to be seen, plainly visible."

The Notice of Intent to Apply for Patent must include (1) date of posting, (2) mineral survey number (if applicable), (3) claim name, (4) name of the claimant, (5) county in which the claim is located, (6) mining district, if not known state "unknown mining district," and (7) names of any conflicting or adjoining claims. Conflicting or adjoining claims are shown on the Mineral Survey. See Model Format MF-1 on Page 201.

The claimant should be careful that no errors are in the notice. For example, claim names must be written exactly as shown on the original location notice or, if there are any amended location notices, shown exactly as they appear in the latest amendment. For example, if a claim name on the latest location notice is Smith #1, the claim name in the Notice of Intent to Apply for Patent must also be Smith #1, not Smith No. 1 or Smith 1. Assure that the legal description is accurate.

Initial Filings

Lode Claims

The application must include (in duplicate) the following documents:

1. Plat of Mineral Survey and Field Notes:

   A plat of a Mineral Survey must be completed, approved, and posted upon the claim before submitting a mineral patent application. See Maps M-3 and M-4 on Pages 166 and 167.

2. Notice of Intent to Apply for Patent:

   A copy of the Notice of Intent to Apply for Patent which was posted upon the claim is required to be submitted for a mineral patent application. See Model Format MF-1 on Page 201.

3. Proof of Posting Notice of Intent:

   A statement, signed by at least two credible witnesses, that the Plat of Survey and Notice of Intent to Apply for Patent was conspicuously posted upon the claim. This statement must give the date and place of posting. See Model Format MF-2 on Page 202.

4. Proof of Improvements:

   For lode claims, Form 3860-8 must be signed by the authorized officer of the BLM Cadastral Survey, which certifies that not less than $500 has been expended in labor or improvements on each claim listed in the application. See Form MF-3 on Page 203.

   In addition to the improvements mentioned in the field notes prepared by the cadastral engineer (43 CFR 3861.2-3), it is proper that the claimant in his application for patent should describe in detail the shafts, cuts, tunnels, or other workings claimed as improvements, giving their dimensions, value, and the course and distance thereof to the nearest corner of the public surveys.

5. Evidence of Citizenship or Certificate of Corporate Authority:

   Individual applicants who do not appear before an authorized agent must submit a statement showing (a) whether he is a native or naturalized citizen, (b) date and place of birth, and (c) current residence. See Model Format MF-4 on Page 204.

   If an applicant has declared his intent to become a citizen, the statement must, in addition to the above, also include the date, place, and the court before which the intention has been declared.

   If an applicant is naturalized, the statement, in addition to the aforementioned, must also include the court from which his certificate was issued.

   An authorized agent representing an individual or group of individuals must submit the above information in regard to the patent applicant along with a power of attorney signed by the applicant authorizing the agent to act for him in the matter of the patent application.

In the case of an incorporated company, a certified copy of its articles of incorporation or its charter must be submitted. A copy of the resolution of the Board of Directors showing the agent has the authority to apply for a mineral patent on behalf of the corporation must also be included. The resolution must be certified by the secretary of the corporation, under seal. Also, a State of California certificate showing the corporation is in good standing must be filed.

6. Certificate of Title (Form 3860-2) or Abstract of Title:

   The Certificate of Title must show that title vests in the applicant. See Form 3860-2; FM-8 on Page 193. This form must be completed by either an attorney currently licensed to practice in the State of California, or by an authorized representative of a California-based title company. The title company's seal must be affixed on the form.

   The title must be accompanied by county-certified copies of the original location notice and all amendments. County-certified copies are usually prepared in purple or blue ink. (Note: County certification is separate from county recordation.)

   An Abstract of Title is a complete record of ownership of the mining claim or mill site from its date of location to the date of adjudication. It must be certified either by an abstractor authorized to do title abstracts under State law or by the legal custodian (the county clerk or recorder) responsible for the official records of mining claims in the county. The Abstract must be accompanied by certified copies of each location certificate and any amendments, and certified copies of all conveyance documents pertaining to the title of the mining claim. See 43 CFR 3862.1-3(e), LR-11 on Page 309. The date of the Abstract must be reasonably close to the filing date of the patent application. A certified supplemental Abstract must be submitted after the application is filed, to prove the applicant had title to the claim on the date of patent application.

7. Narrative Statement:

   The application must show that the applicant has the right of possession to the claim, and the applicant should state briefly but clearly the facts constituting the basis of his right to a patent, a full description of the vein or lode, whether ore has been extracted and, if so, of what amount and value, and the precise place within the limits of each claim where the vein or lode is exposed, and its width at that point (43 CFR 3862.1-1). See specific information required in the Concept of Discovery chapter of this handbook, Page 4.

   Geology and mineral data for discovery should be described as given in the Specific Information Required for Discovery Section.

8. Atomic Bomb Statement:

   For claims located after August 1, 1946, the applicant must make a statement as to whether the claimant had or had not direct involvement in the development of the atomic bomb.

   If the claimant did participate, the nature of participation must be stated and disclosed whether "...he acquired any confidential, official information as to the existence of deposits of uranium, thorium, or other fissionable source materials in the lands covered by his application" (43 CFR 3862.1-1(b)).

Placer Claims

The application must include (in duplicate) the following documents:

1. Plat of Mineral Survey and Field Notes:

   Same as for lode claims, if applicable. A mineral survey is required if the placer claim is located upon unsurveyed lands or cannot conform to legal subdivisions. If a mineral survey is necessary, it must be completed and approved before filing the patent application.

2. Notice of Intent to Apply for Patent:

   Same as for lode claims.

3. Proof of Posting Notice of Intent:

   Same as for lode claims. If a plat of mineral survey is not required, then the statement would attest to posting only the Notice of Intent to Apply for Patent.

4. Proof of Improvements:

   Same as for lode claims if mineral survey has been accomplished.

   If the placer claim is described by legal subdivision, a statement signed by two or more disinterested witnesses attesting that the improvements were made by the applicant and the value is not less than $500 must be submitted. See Model Format MF-3 on Page 203.

   Since no examination and report by a mineral surveyor is available in cases of claims taken by legal subdivisions, the claimant, in his application, should describe in detail the shafts, cuts, tunnels, or other workings claimed as improvements, giving their dimensions, value and the course and distance thereof to the nearest corner of the public surveys in addition to the data required above (43 CFR 3863.1-3(d)).

5. Evidence of Citizenship or Certificate of Corporate Authority:

   Same as for lode claims.

6. Certificate of Title (Form 3860-2) or Abstract of Title:

   Same as for lode claims. See Form FM-8 on Page 193.

7. Narrative Statement:

   The application must show that applicant has the right of possession to the claim. An applicant should state briefly but clearly the facts constituting the basis of his right to a patent and such data as will support the claim that the land applied for is placer ground containing valuable deposits not in vein or lode formation and that title is sought, not to control water courses or to obtain valuable timber, but in good faith because of the mineral therein. This statement, of course, must depend upon the character of the deposit and the natural features of the ground, but the following details should be covered as fully as possible:

> If the claim is for deposit of placer gold, there must be stated the yield per pan, or cubic yard, as shown by prospecting and development work, distance to bedrock, formation and extent of the deposit, and all other facts upon which he bases his allegation that the claim is valuable for its deposits of placer gold (see also No. 7 under "Lode Claim"). If it is a building stone or deposit other than gold claimed under the placer laws, he must describe fully the amount, nature and extent of the deposits, stating the reasons he regards it as a valuable mineral claim. He will also be required to describe fully the natural features of the claim; streams, if any, must be fully described as to their course, amount of water carried, and where they fall within the claim; and the kind and amount of timber and other vegetation thereon and adaptability to mining or other uses (43 CFR 3863.1-3).
>
> If the claim is all placer ground, that fact must be stated in the application and supported by accompanying proofs; if the ground is of mixed placer and lode, it should be stated in the narrative of the application process, with a description of all known lodes situated within the boundaries of the claim. A specific declaration must be furnished for each known lode intended to be claimed. In all cases, whether the lode is claimed or excluded, it must be surveyed and marked on the plat, the field notes and plat giving the area of the lode claim or claims and the area of the placer separately. All other known lodes are, by the silence of the applicant, excluded by law from all claim by him, of whatsoever nature, possessory or otherwise (43 CFR 3863.1-3(b)).

Geology and mineral for discovery data should be described as given in the Specific Information Required for Discovery Section.

8. Statement of All Placer Ground and No Known Lodes:

   If it is stated in the narrative that the claim is all placer ground, a statement signed by two or more witnesses corroborating such statement (43 CFR 3863.1-3(b)) is required. See Model Format MF-5 on Page 205.

   The statement of "no known lodes" must also be corroborated by a statement of two or more witnesses.

9. Atomic Bomb Statement:

   Same as for lode claims.

Dependent Mill Site

A dependent mill site is connected to an unpatented or patented lode or placer mining claim.

1. Plat of Mineral Survey and Field Notes:

   Same as for lode claim, if applicable. A mineral survey is not required if the mill site is located in a surveyed section and is described by legal subdivision (i.e., N1/2NW1/4SW1/4SE1/4). The plat of survey, if required, and Notice of Intent to Apply for Patent must be posted in a conspicuous place upon both the claim and the mill site.

2. Notice of Intent to Apply for Patent:

   Same as for lode claims.

3. Proof of Posting Notice of Intent:

   Same as for lode claims.

4. Proof of Nonmineral Land:

   A mill site must be situated upon land that is nonmineral in character. A statement, by two or more witnesses familiar with the land, attesting that the land is nonmineral must be submitted. See Model Format MF-6 on Page 206.

5. Evidence of Citizenship or Certificate of Corporate Authority:

   Same as for lode claims.

6. Certificate of Title (Form 3860-2) or Abstract of Title:

   Same as for lode claims. See Form FM-8 on Page 193.

7. Narrative Statement:

   Lands entered must be shown to be nonmineral in character. The maximum size of a mill site is five acres. A mill site may contact a side line of a lode or placer claim, provided it is shown that the lode vein, or placer does not extend into any part of the ground covered by the mill site. A complete description of the geology should be included in the application. Use and occupancy of the land for mill site purposes must be shown. See the Mill Site Validity section in this handbook, Page 17.

8. Atomic Bomb Statement:

   Same as for lode claims.

Independent Mill Sites

An claimant of a custom quartz mill or reduction works, not owning a mine in connection therewith, is entitled to make application and receive a patent for the mill site at the same rate charged for lode mining claims. Custom milling for others on a reasonably consistent basis must be shown.

Subsequent Flings

The applicant will be asked to cure any deficiencies noted during the preliminary review. A supplemental title report and publisher's agreement will also be requested at this time.

Supplemental Abstract or Certificate of Title

A supplemental abstract or Certificate of Title brought down to and including the date of filing of the application, showing title vests in the applicant, is required to be filed. See Form FM-9 on Page 194. The preliminary Certificate of Title covers a period near the date of filing the application. The supplemental Certificate covers the period from the date the initial Certificate was signed through the date of filing of the application (the date the application was received and date-stamped by the BLM).

Publisher's Agreement

The publisher's agreement is obtained by the applicant from the newspaper designated by BLM as being the newspaper of general circulation published nearest the claim. The agreement states that, in connection with the patent application, the applicant alone will be held responsible for the charges. See Model Format MF-7 on Page 207.

The BLM will send the actual publication to the publisher in accordance with the agreement. The applicant will be notified by certified mail of the publication dates so that he can assure the Notice of Intent to Apply for Patent remains posted on the claim during the entire 60-day period of publication.

Supplemental Data

At the proper time in the proceedings, the applicant will be asked to provide the proof of publication, affidavit of continuous posting on claim, statement of fees and charges, and purchase money. The mineral examiner may ask for supplemental data needed in determining discovery on the claims.

Post Publication Filings

Preface

When the 60-day publication period has expired, and if no adverse claims have been filed, the applicant is required to file final proofs consisting of:

1. Proof of publication;

2. Proof of continuous posting;

3. Statement of fees and charges.

Purchase money may be sent concurrently with the above proofs, but **may not** be paid until the proofs are filed.

Proof of Publication

The applicant is required to furnish a sworn statement from the publisher that the notice was published for the required period, showing the first and last dates of publication. Newspapers use a standard format for affidavits covering legal advertisements, so the applicant will have no problem obtaining this (43 CFR 3862.4-5). See Model Format MF-8 on Page 208.

Proof of Continuous Posting

This is the claimant's sworn statement that the plat and notice remained conspicuously posted upon the claim for the entire 60-day publication period, giving the dates, which must include the fourth day after date of issue of the last newspaper carrying the notice. This requirement of the law may not be waived (43 CFR 3862.4-5). (Note: A sworn statement is required (*Dennis J. Kitts*, 84 IBLA 338 (1985).) See Model Format MF-9 on Page 209.

If the dates of posting shown in the statement do not cover the full 60-day period, the statement is unacceptable. If, in fact, the posting was in place for the required time, a new statement giving the proper dates can be accepted.

If the applicant cannot attest that the posting was accomplished for the full 60-day period, republication, posting in the BLM office and posting on the claim will be necessary. The law requires that three methods of notice must be published and posted concurrently a full 60 days (*Great Western Lode Claim*, 5 LD 510 (1887)). These methods are (1) posting on the claims, (2) publication in a newspaper, and (3) posting in the BLM California State Office Information Access Center in Sacramento.

Statement of Fees and Charges

The statement of fees and charges is a statement made by the claimant of the fees and charges paid by him for publication of his notice, cost of survey (which can be prorated if not all the claims in the survey are under application), and all fees and money paid to the BLM (filing fee, purchase money, and application for survey money) (43 CFR 3862.4-6). See Model Format MF-10 on Page 210.

Purchase Money

Purchase money cannot be accepted until all of the required proofs have been filed and any adverse claim has been resolved. If purchase money is prematurely submitted, it will be returned or refunded to the applicant (see *U.A. Small*, 108 IBLA 102 (1989)). The date purchase money is paid is considered the date of entry which is the date equitable title vests in the applicant if entry is allowed.

Purchase price for lode claims, mill sites used in connection with lode claims, or custom mill sites is $5.00 per acre or fraction thereof. Purchase price for placer claims or mill sites used in connection with placer claims is $2.50 per acre. If there is a fraction of an acre, it is counted as a whole acre (see 43 CFR 3862.4-6; 3863-1(b); 3864.1-1(c) and 3864.1-2). The computation is based on the total acreage included in the application. An example is: 20 acres + 19.50 acres = 39.50 acres, and 40 acres x $2.50 = $100).

Part 1 (First-Half - Mineral Entry Final Certificate)

Completion of Part 1 or "first half" of the final certificate confirms that mineral entry has been allowed. See Form 1860-1, Form FM-10 on Page 193.

The effects of issuance are (1) confirmation of equitable title in the applicant, (2) certification that the applicant has satisfactorily complied with all the "paperwork" requirements of the Mining Law (title, proofs, posting requirements, tendered purchase money, etc.), (3) elimination of the need for performance of assessment work, and the related filings required by the county and BLM, and (4) segregation of the land from all further entry under the public land and mineral laws as of the date of receipt of the purchase price. (Note: Completion of Part 1 does not authorize patent issuance.)

Once the first half of final certificate is completed, the payment of the annual maintenance fees is no longer required on the claims.

Adverse Claims

An adverse claim is made by anyone claiming the mineral rights to the same land or portion thereof (or mill site vs. mill site) that the patent applicant is claiming. It must be filed during the 60-day period of publication. The adverse claimant files documents with the BLM showing the conflict between the claims and stating that an adverse claim is being filed. Procedures are found in 43 CFR 3871. See LR-12 on Page 319.

The filing of an adverse claim during the 60-day period of publication "stays" (suspends all time requirements of) all action on the patent application. The only documents that are allowed to be filed by the applicant are the statement by the publisher that the notice was published for the required period, and the applicant's own statement of posting during the 60-day publication period.

The adverse claimant is required to start proceedings in a court of competent jurisdiction to determine priority of rights within 30-days of filing an adverse claim with the BLM.

If the claimant fails to start proceedings, the applicant obtains a statement from the clerk of the court that the judgment is a final judgment, that the time for appeal has expired, that no such appeal has been filed, or that the defeated party has waived the right to appeal. Upon receipt, the BLM issues a decision that patent proceedings are to continue.

If the adverse claimant starts proceedings, the outcome of these proceedings dictates the action to be taken. If the patent applicant is determined to have priority of rights, the application will proceed. If the adverse claimant prevails, the application is rejected to the claims affected. The adverse claimant may institute new patent proceedings on the claims the same as any other claimant.

Table T-2 provides a summary of the initial mineral patent document filings. Table T-3 is a summary of the subsequent mineral patent document filings and post publication documents. See these Tables on Pages 132 and 133.

MINERAL SURVEY PROCEDURES

Introduction

Mineral surveys are used to delineate the legal boundaries of mineral lands on the public domain where the boundaries are established by lines that deviate from standard legal subdivision and lots. **All lode mining claims** must have a mineral survey prior to application for patent because, by nature, lode deposits cannot conform to the public land survey system. Some placer mining claims and mill sites must also have a mineral survey if their boundaries are described by metes and bounds instead of by legal subdivision. All mining claims and mill sites **must** have a mineral survey if they are on unsurveyed public lands.

A mineral survey should accomplish the following:

1. Monument the claim corners;

2. Witness the location in the field;

3. Determine acreage by claim and any conflicts. Acreage and conflicts are shown in the field notes (see Table T-4 on Page 134);

4. Show all conflicts with earlier surveys and prior locations that may or may not be excluded in the claimant's application for patent;

5. Show all workings on the claim, describe and report the value of all improvements having a direct relation to the development of the claim and the extraction of minerals (the above information is also shown in the field notes);

6. Tie to a corner of the BLM rectangular survey system or mineral monument.

The mineral survey itself confers no rights; a patent must be issued. For more specific information, check statement 1, 43 CFR Part 3861 Survey and Plats.

Under appropriate laws of the United States, a mining claim is a property right on a particular piece of land having valuable mineral deposits to which a person(s) asserts a right of possession.

There are three general types of mineral deposits that are located by using two different types of mining claims. The three general types of deposits are lode, placer and disseminated. Types of mining claims used are lode and placer. Disseminated deposits are located by using lode mining claims.

Layouts for an ideal lode mining claim, mill site, and some placer mining claims are shown on Figure F-2 on Page 151.

Types of Mining Claims and Mill Sites and Disseminated Deposits

Lode Mining Claims

A lode mining claim is a claim that typically covers a valuable lode, vein, ledge, tabular deposit, or other rock in place between definite walls or boundaries.

The following section from 30 USC 23 describes lode claims:

> Mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, located prior to May 10, 1872, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining-claim located after the 10th day of May 1872, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the 10th day of May 1872, render such limitation necessary. The end lines of each claim shall be parallel to each other.

See Map M-3 on Page 166 for an example of a mineral survey of two lode mining claims and mill site. See also Pages 309-314, (43 CFR 3862).

Placer Mining Claims

Placer mining claims are used for placer deposits and are described at 30 USC 35 as follows:

> Claims usually called "placers," including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands. And where placer claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be
> r

> required, and all placer-mining claims located after the 10th day of May 1872, shall conform as near as practicable with the United States system of public land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands....

An example of placer mining claims that require a mineral survey is shown on Map M-5 on Page 168. See also Pages 309-314 (43 CFR 3863).

Disseminated Deposits

Disseminated deposits in California are mostly gold, outlined through exploratory drilling, and presumed to underlie most of the lode mining claim involved. Because there is no vein or ledge, no apex rights are granted. The claim is not surveyed in the same manner as is a typical lode claim, as no centerline is surveyed. Also a statement must be made by the mineral patent applicant or his qualified agent to the effect that the claims cover a disseminated deposit.

Map M-6 on Page 169 shows a Master Title Plat (MTP) on which Mineral Survey (MS) 6900 is outlined and a portion patented. Map M-7 on Page 170 is a copy of the actual MS 6900 plat. This survey is for a disseminated gold deposit in the California Desert.

Mill Sites

Under mining laws and regulations the claimant of a valid mining claim can in good faith locate as much as five acres of nonmineral land as a mill site for proper mill site uses. Also, the claimant of a custom quartz mill or reduction works, independent of any mining claim, may locate as much as five acres of nonmineral land as a mill site.

The following section is taken from 30 USC 42:

> (a) Mill sites associated with lode claims
>
>> Where nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location made on and after May 10, 1872 of such nonadjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by Sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and Section 661 of Title 43 for the superficies of the lode. The claimant of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill site, as provided in this section.

(b) Mill sites associated with placer claims

> Where nonmineral land is needed by the proprietor of a placer claim for mining, milling, processing, beneficiation, or other operations in connection with such claim, and is used or occupied by the proprietor for such purposes, such land may be included in an application for a patent for such claim, and may be patented therewith subject to the same requirements as to survey and notice as are applicable to placers. No location made of such nonmineral land shall exceed five acres and payment for the same shall be made at the rate applicable to placer claims which do not include a vein or lode.

See Maps M-3 and M-4 on Pages 166 and 167 for an example of a mineral survey of an irregular and a regular shaped mill site. See also Pages 309-314 (43 CFR 3864).

Mining Districts

Prior to 1866 no provisions had been made by the Congress of the United States for the disposition of the minerals on the public domain. Therefore, prospectors and miners formed mining districts to provide self government and to maintain law and order.

Today in California, the mining districts exist in name only. As county governments were set up, the mining districts turned their records over to the county recorders and left the making and enforcement of local mining laws to the county and state government. So, in order to stay within the mineral patent regulations, if the latest location notice shows a mining district, it will be shown on the patent mineral survey and the mineral patent. If there is no mining district shown on the location notice, the mineral patent will read "Unknown" Mining District. This will be consistent with the "Land Description in Patents" (43 CFR 3862.8-1). See Page 201.

Application for Mineral Patent Survey

Application for survey must be made by the claimant or his agent on the current Form 3860-5. The instructions are on the reverse of Form FM-11 on Pages 197-198.

1. The name of the applicant (claimant) should be given exactly as it is to appear in the patent, together with his or her mailing address.

2. If the claims are known by a group name, it should be placed at "Group Name." If they do not have a group name this item is left blank.

3. The claim names must appear exactly as they are shown on the location notice (Ruffy No. 1 should not be given as Ruffy #1). The date the claim was first located and recorded in the present chain of title must be given. Under dates of amendment, enter only the last amendment made.

4. The location of the claims by section, township and range must be given (stating that the section lines are unsurveyed, if based on protracted survey lines). County and State must be given. If not within a national forest, "None" should be used in the space provided.

5a. To support the application, furnish two copies of the location notice (or last amendment with the original location and recordation date shown thereon). One copy must be certified by the custodian of the records where the mining claims are locally recorded, usually the county recorder.

5b. The claim location must be distinctly monumented on the ground so that its boundaries can be readily traced.

6. In accordance with the instructions, a deposit in the proper amount must be made to cover the costs of BLM processing the survey. The current California deposits are $950 for the first location, plus $375 for each additional contiguous location or mill site.

7a. The mineral surveyor designated must be one with whom prior arrangements have been made for the survey. The BLM may request proof, in the form of a simple letter from the mineral surveyor stating he has agreed to make the survey. The application should be dated and signed by the applicant(s), by the authorized officer of a corporation, or by the attorney-in-fact if by an agent acting for the applicant. Proof of authorized signature will not be required at this time, but will be required at the time application for patent is made.

7b. Several claims, generally limited to 50 in number, may be embraced in a single survey providing they are contiguous, i.e., not merely touching at corner points; they must adjoin with common boundaries or overlap. The number 50 is arbitrary. However, surveys in excess of this are difficult to process. Only a surveyor appointed by the BLM may perform a mineral survey for a patent application.

Selection of a U.S. Mineral Surveyor

Although basically a land surveyor, the mineral surveyor should have a working knowledge of geology, ore deposits, and the principles of mining in order to properly execute his work. Many factors enter into the ultimate cost of a mineral survey, such as the terrain, distance from centers of population, condition of the public land survey, number of conflicts with prior surveys and patents, the age of conflicting surveys, weather conditions, and inflation. Fees should be a secondary consideration when selecting a mineral surveyor. A complete and quality job is essential. Many of the early surveys of the public lands resulted in poor or even fraudulent work because of the low contract price.

If a mineral surveyor has had considerable experience in an area, he may agree to a fixed price per claim, plus a fixed price per conflict and per mile of retracement of section lines when the subdivision of a section is required. An alternative to this is a daily or hourly fee for each principal or party chief and assistant, plus expense at cost, which assures the BLM and the claimant that quality will not be sacrificed because of cost. In the latter case, the mineral surveyor should provide the claimant with an estimate so that he will be prepared to meet his invoices. Either type of contract should provide for periodic payments, and the mineral surveyor is justified in requesting an advance deposit. In any event, the arrangement between the mineral surveyor and the claimant is a private contract, and the BLM is not responsible. An up-to-date roster of mineral surveyors is available at any BLM office, or claimants may write to the BLM California State Office requesting a copy. See Source S-9 on Pages 237-242.

Survey Authorization (Order for Survey)

An order for a mineral survey must be issued from the California State Office of the BLM in the State where the claim is situated. See Model Format MF-11 on Page 211. The order for survey is issued in memorandum form, from the Chief, Branch of Cadastral Survey, and the information is essentially the same as contained in the application for survey. The next consecutive survey number is assigned; the mineral survey number of a canceled survey will not be used again, unless reopened as an amended survey. It would then be shown with an "AM," following the mineral survey number. Lodes and placers may be included in the same survey. If a mill site is included, it is designated by adding the letter "B" to the survey number; the other claims are designated "A." Copies of the location notices are furnished to the mineral surveyor, and the Regional Forester if the claims are within a National Forest, or the National Park Service if within a National Park or Monument.

If, after an order for survey has been issued the claimant finds the location notice does not practically describe the location as staked on the ground, he should file an amended location notice, correctly describing the claim, and obtain an amended order for survey. In fact, any change in the original order including the addition or dropping of locations or the designation of a different surveyor calls for an amended order. Also if the claimant sells the claims, an amended order will be required to show the new claimant. An amended order may be used to authorize the survey of additional expenditures if the survey was approved, but less than $500 worth of expenditures had been made. The most common reasons for canceling an order for survey, usually at the request of the claimant and for various reasons beyond the control of the mineral surveyors, include illness, weather conditions, nonpayment, or a contest brought by the United States. Under any circumstances, both the claimant and the mineral surveyor will be advised by certified mail 30 days in advance of the action and will be requested to show why the order should not be canceled. Lacking a reasonable explanation, the order will be canceled, the BLM will notify both the claimant and the mineral surveyor, and any excess deposit is refunded to the claimant.

On occasion, an order for survey will be canceled and it is not known how far the mineral surveyor has proceeded with the field work and what corners have been set and marked. In no case should the corners be removed as they still serve as corners of the location which may be perfectly valid.

When all field work is accomplished the mineral surveyor prepares a preliminary plat and field notes for submittal to the Chief, Branch of Cadastral Survey. In order that the results of the survey be reported in a uniform manner, the plat and field notes are prepared in strict conformity with the specimen plat and field notes found in the *Manual of Surveying Instructions,* 1973 edition.

Office Examination and Review

The examination of the survey usually begins by reading the notes and comparing them with the preliminary plat. As a general rule the mineral surveyor will write the notes from the plat. If inconsistencies appear, they usually are typographical errors in the notes. However, this must be verified by the mineral surveyor whether it be a lode, placer, or mill site. The field note format is designed to furnish all the needed information concerning the manner of describing the boundaries, corners, lode lines, connections, intersections, conflicts, improvements, magnetic declination, area, location, and other data necessary for processing.

The area statement should show all conflicts and be so arranged that any exclusion may be easily made and the net area to be patented readily obtainable. End lines on a lode claim must be parallel and the statutory length and width of a lode claim cannot be exceeded. Claim improvement should be fairly valued and the discovery point should agree with that given in the location notice. Calculations are verified, computing the solar observation; the declination's verified, as well as the latitude and longitude. The survey should close 1 ft. in 2000 feet. All areas should check within 0.02 acres.

Under the heading **Memorandum** the Mineral Surveyor explains any differences with the calls given in the location notice, as well as typographical errors in the notice. Under the heading **Location**, it is important to state that the survey is identical with the location as marked on the ground or to state the differences. When describing corners, ties should be given to the location monuments when they are not identical. Only those improvements counting toward the $500 expenditure are to be given under the heading **Improvements**. In such case, the discovery work should be numbered No. 1. Any improvements that do not count toward the patent expenditure or those that have been made by others should be listed under **Other Improvements**.

Other Corner Descriptions and Supplement Data is an important part of the notes since it contains the report on prior surveys. Minor discrepancies in bearings and distances between mineral surveys and BLM rectangular surveys are not reported. The phrase "substantially correct as approved" may be used or "approximately correct as approved." Chapter IX of the *Manual of Surveying Instructions,* 1973 edition, covers the essentials of plat drafting, and Chapter X gives technical direction to the Mineral Surveyor.

The California State Office uses only two preprinted forms in the Mineral Survey Process. They are Form 3860-5, "Application for Survey of Mining Claims," and Form 3860-8 "Certificate of Expenditures, Improvements, and Mineral Survey." See Forms FM-11 and FM-12 on Pages 197-199.

Approved Patent Survey Plat and Field Notes

The patent mineral survey is approved in the California State Office by the Chief Cadastral Surveyor. See Form FM-13 on Page 200. Form 3860-8, certifying the $500 expenditure, must also be executed by the above-authorized officer and is attached to the original signed field notes along with the certified location notices. After approval, the plat and field notes are reproduced and the survey returns are distributed in accordance with existing regulations. The original plat and field notes are then filmed and copies of the film are placed in the open files of BLM, Survey Records Unit, California State Office, Sacramento. Copies of any of the Survey Records are available to the public.

Good Faith Location

The Branch of Cadastral Survey is often asked to prepare a supplemental plat to provide a new lot designation for mining claims (placers and mill sites) that will be acceptable for patenting purposes. Supplemental plats are based entirely upon the existing office records. While this is acceptable for patenting, it could cause title problems in the future, as could any patent taken by the legal subdivision of a section. The patent does not guarantee that the location of the mining claim on the ground will be identical to the present description of the claim. The resurvey of older original surveys has sometimes revealed quite a different rectangular configuration.

The *Manual of Instructions for the Survey of the Public Lands,* 1973 edition, at Section 6-11 states:

> There are certain questions of a purely judicial nature involved in resurveys of every description where the decision is to be reserved to the Director of the Bureau of Land Management, particularly those relating to compliance with the general laws in respect to the entry of the public lands. Thus, it comes within the realm of the surveying process to identify and mark out on the ground the various legal subdivision of the public domain, but it is a judicial question beyond the function of the surveyor to determine whether or not specified lands have been duly earned under a certain entry. In the resurvey process the surveyor will determine whether or not lands embraced within a claim as occupied have been correctly related in position to the original survey. *(Emphasis in text).*

Therefore, it is important for claimants to understand the provisions of the laws relating to resurveys and the term "bona fide rights." At Section 6-13 the *Manual* states:

> Bona fide rights are those acquired in good faith under the law. A resurvey can affect bona fide rights only in the manner of position or location on the earth's surface. The surveyor will be concerned only with the question of whether the lands covered by such rights have been actually located in good faith. Other questions of good faith (such as priority of occupation, possession, continuous residence, value of improvements and cultivation) do not affect the problem of resurvey except as they help to define the position of the original survey. *(Emphasis in text).*

Section 6-14 states:

> The basic principles of protecting bona fide rights are the same in either the dependent or the independent resurvey. Each is intended to show the original position of entered or patented lands included in the original description. The dependent resurvey shows them as legal subdivisions, the independent resurvey as segregated tracts. Each is an official demonstration by the Bureau of Land Management according to the best available evidence of the former survey. There is no legal authority for substituting the methods of an independent resurvey in disregard of identified evidence of the original survey.

Section 6-15 states:

> The position of a tract of land, described by legal subdivisions, is absolutely fixed by the original corners and other evidences of the original survey and not by occupation or improvements, or by the lines of a resurvey which do not follow the original. A conveyance of land must describe the parcel to be conveyed so that it may be specifically and exactly identified, and for that purpose the laws direct that a survey be made. Under fundamental law the corners of the original survey are unchangeable. Even if the original survey was poorly executed, it still controls the boundaries of land patented under it.
>
> The surveyor should neither rigidly apply the rules for restoration of lost corners without regard to effect on location of improvements nor accept the position of improvements without question regardless of their relation or irrelation to existing evidence of the original survey.
>
> Between these extremes will be found the basis for determining whether improved lands have been located in good faith or not. No definite set of rules can be laid down in advance. The solution to the problem must be found on the ground by the surveyor. It is his responsibility to resolve the questions of good faith as to location.

It is the responsibility of the claimant to locate in good faith by relating his mining claim taken by legal subdivision to the original survey or resurvey depending on the location date of the claim.

If a claimant has any questions regarding the condition of the rectangular survey that would influence the decision on whether or not to have a mineral survey performed, they may visit the Branch of Cadastral Survey. There is always a Cadastral surveyor available to answer questions.

Also from the *Manual*, Section 6-18 states:

> Cases will arise where lands have been occupied in good faith, but whose boundaries as occupied disagree with the position of the legal subdivision called for in the description. Obviously the rule of good faith as to location cannot apply; relief must be sought through the process of amended entry under R.S. 2372, as amended (43 USC 697), to cover the legal subdivisions actually earned, rather than through an alteration of the position of established lines. This is a process of adjudication rather than one of resurvey. A case of this character should be regarded as erroneous location in precisely the same manner as if the question of resurvey were not involved. *(Emphasis in text).*

BLM NATIONAL PROGRAM FOR CERTIFICATION OF MINERAL EXAMINERS AND REVIEW MINERAL EXAMINERS

Introduction

Patent and other validity examinations are done, or directed by a certified mineral examiner. A mineral examiner is a mineral specialist who is qualified to give expert testimony in an Administrative Hearing before an Administrative Law Judge concerning the presence or absence of a discovery of a valuable mineral deposit under the mining laws (*Rodgers et al., v. James Watt*, 776 F.d 1376 (9th Cir., 1984); *Charleston Products v. Cecil Andrus*, 553 F.d 1213-14 (9th Cir., 1977); *Verrue v. United States*, 457 F.d 1204 (9th Cir., 1972); and *United States v. Janet Copple et al.*, 81 IBLA 132,136 (1984)).

The BLM-certified review mineral examiners will perform final technical review of mineral reports generated by the BLM and other governmental agencies such as the USFS and National Park Service.

The BLM mineral examiners and review mineral examiners are certified through the BLM National Certification Program. BLM Instruction Memorandum No. 89-752, dated September 15, 1989, describes the purpose and nature of the program in detail. Briefly, the purpose of the program is to assure management that personnel preparing reports and making technical reviews are qualified to perform those functions. It is intended to foster consistency and promote increased competence and professionalism among mineral examiners. In BLM Manual 3895 (February 6, 1995), the certification of mineral examiners is described in detail.

Duties

Certified mineral examiners will perform, and/or direct patent and other validity examinations in the field and the office, and sign off on mineral reports. In addition to performing, and or directing some examinations, certified review mineral examiners will perform technical review of mineral reports and provide technical guidance and on-the-job training to staff members.

Requirements for Certification

All certified mineral examiners must meet Office of Personnel Management (OPM) X-118 standards as a Mining Engineer (880) or Geologist (1350).

Skill, knowledge, and ability must be demonstrated in the following subjects:

Mining Law
Ore Deposition/Mineral Deposits
Mineral Exploration Methods
Mineral Processing
Sampling Theory and Practice
Surface and Underground Mapping
Mineral Property Economic Evaluation
Industrial Minerals
Mining Methods
Structural Geology
Field Methods
Hand-Specimen Mineralogy/Petrology

Also, the following BLM training courses or their equivalent must have been completed:

3000-13	Mining Claim Validity Examination Procedures
3000-11	Mine and Beneficiation Cost Estimating and Economic Evaluation
3000-09	Placer Examination Techniques

Appropriate professional experience with a Federal agency performing applicable minerals actions, or with private industry performing analogous duties, may be substituted for some or all of the above training courses.

Certified mineral examiners must also have direct experience in validity and patent examinations and mineral report writing.

In addition to the above requirements for a certified mineral examiner, the certified review mineral examiner must have the following experience and competency:

1. Been a lead examiner on several patent and/or other validity or surface use examinations;

2. Worked on cases covering several different commodities;

3. Have working knowledge of the current needs and practices of the mining industry;

4. Demonstrated ability in communication skills, especially in technical writing.

All certified review mineral examiners are required to maintain and improve their skills, knowledge, and abilities through continuing education, experience, and professional affiliation.

Certification Process

Certification of individuals is granted by a national panel of five certified mineral review examiners after an applicant has been determined to meet the above requirements. Panel members and a chairperson serve at the pleasure of the BLM Assistant Director for Energy and Mineral Resources, located at the BLM Headquarters in Washington, D.C.

By October 1, 1990, only certified review mineral examiners will be allowed to sign technical review of validity, patent, and surface use mineral reports. By April 1, 1991, only certified mineral examiners or certified review mineral examiners will be allowed to perform, and/or direct mining law related investigations and author reports based on those investigations.

EXAMINATION AND VERIFICATION PROCEDURES

Introduction

A mineral examination of mining claims and mill sites is made by, or under the direction of, a certified mineral examiner. The examination is required to verify whether a discovery of a valuable mineral deposit has been made within the boundaries of mining claims. In addition to verification of discovery on placer claims, an examination is made to see if each 10-acre parcel within the claim is mineral in character. In the case of mill sites, the examination is necessary to ensure that each 2-1/2-acre parcel is being used in good faith for mining, milling, and other uses reasonably incident thereto, and that the land is not mineral in character.

The mineral examination, for mineral patents, is largely based on verification of data supplied by the applicant. The more complete the discovery report in the application, the faster the examination can proceed. Field examination procedures can be complex, demanding, and time-consuming. It is imperative that coordination with, and assistance and cooperation of the applicant be obtained in order to move the application forward swiftly and efficiently. For a valid existing rights (VER) validity examination ordered by the BLM, the mineral examiner will meet with different situations. Some claimants will be cooperative, and some will not. Most of the time, a certified mineral examiner will have only a small amount of data presented to him or her by the claimant. Therefore, the mineral examiner must generate sufficient mapping, sampling, and economic evaluation data to arrive at a decision about discovery.

Pre-Examination Procedures

In California, the procedure for mineral patent applications begins when a duplicate of the case file (a "dummy file") is sent to the appropriate BLM District or Filed Office after the case itself has been adjudicated by the BLM California State Office. The District or Field Manager assigns the case to a mineral examiner in the office. The District or Field Manager immediately notifies the State Office as to who will conduct the field examination and prepare the mineral report. Also, a date-tracking schedule for completion of the mineral report and when the mineral report will be sent for final technical review is placed in the BLM case recordation system for case tracking. For valid existing right determinations, the District or Field Offices may start examinations with the approval of the State Office.

Mineral examiners in a field office act independently, setting their own schedule and contacting the claimant to arrange the time and place for the field examination. The claimant is notified that a field examination will be made in order to verify the good faith of the mining claims and is requested to be present. In addition, any personnel knowledgeable in specific operations on the mining claims are requested to be present. The appropriate Field Office Manager may attend the preliminary field examination. Preliminary field inspections or meetings may be held prior to the field examination.

Preliminary Field Inspection and/or Meetings

At any preliminary inspection or meeting, a mineral examiner can explain the purpose of the examination to the claimant and the procedures to be employed in the course of the examination. A walk around the claim is made that helps to familiarize the certified mineral examiner with the location of mining claim boundaries, discovery points, mine and/or mill improvements, mineral sample locations, and so forth. In addition, meetings with mine geologists and engineers may be needed to assist in identification of the geology and mineralization of the property. Examination of mill and processing facilities is also necessary, as well as a review of the operation plans. From the preliminary examination, the certified mineral examiner will obtain a "feel" for activity or operations on the property, and the geology and mineralization of the property. An evaluation of the information obtained during a preliminary field examination will be made by the mineral examiner. The purpose is to identify data gaps which need to be filled before verification of the discovery can be completed. If necessary, the examiner will request, in writing, further data needs and set a date for the final field examination.

Field Examination

During the actual field examination, the mineral examiner will verify or prepare geologic maps, sketches, and cross sections showing the nature and extent of the mineral deposit on the mining claims. See Maps M-8 and M-9 on Pages 171 and 172. This is an important part of the examination as it assists in the definition of the deposit and the geologic and mineral conditions which contribute to deposit formation. These conditions will be used in projecting the mineral character of 10-acre parcels on placer mining claims. See Maps M-10 and M-11 on Pages 173 and 174.

All geologic mapping or verification of the applicant's map is done in the field. Claim or location boundaries are noted on the map to ensure that the deposit is within the boundaries of the claim. It cannot be over-emphasized that geologic maps are a primary data need in the field and are usually the first projects started and completed by the mineral examiner. Maps will later be used to develop the model and deposition characteristics of the mineralized body and to locate sampling sites and show volume or tonnage calculations. Geologic maps are usually of a more detailed scale than published geologic maps of the area. If adequate maps are not supplied in the discovery data in the patent application, the mineral examiner will utilize available aerial photographs, satellite imagery, or other sources of data to assist in the preparation of adequate maps. Even when accurate maps are supplied, it is still necessary to walk the ground to visually confirm presented information. Geologic mapping can be the most time-consuming portion of the field examination process.

Complementary to geologic mapping is the mapping of surface mine workings and improvements. This work entails either verification of maps submitted by the applicant, or preparation of new maps. The location of each surface improvement is noted in the field on the main geologic map. Geologic maps and sketch maps noting geologic and mineralogic characteristics are also prepared.

For underground mineral developments, separate maps are prepared. Mapping is begun with accurate measurements of the underground workings, including but not limited to adits, drifts, tunnels, cross-cuts, slopes, and shafts. See Map M-9 on Page 172. If necessary, the position of each working is surveyed to reflect its location relative to claim boundaries. After the base map of the workings is complete, the mineral examiner will place all geologic and mineralogic features on the map. Notations will include the observed geology, workings, altitude of bedding or structure, faults, shear zones and mineralized areas. With claimant assistance, the mineral examiner will note the location of all discovery points and, if necessary, the location of the claimant's sample areas and high grade locations. After preparation of the mine maps, appropriate cross and longitudinal sections are prepared illustrating the extent of mineralized areas.

Features which affect the ability to mine, or the economics of the deposit, will be noted. These include structurally incompetent zones in the rock, water seepage, or areas closed because of structural or environmental hazards (these areas are not entered by the mineral examiner), reclamation practice, and environmental mitigation measures.

Although a formal National Environmental Policy Act (NEPA) analysis is not required prior to issuance of patent, reclamation and environmental costs to satisfy the requirements of Federal, State, and local laws and regulations are to be considered in the mineral examination. *United States v. Kosanke Sand Corp.*, (On Reconsideration), 12 IBLA 282, 80 ID 538 (1973); *U.S. v. Pittsburgh Pacific Co.*. 30 IBLA 388, 84 ID 282 (1977), affirmed 462 F.Supp. 905, 614 F.d 1190 (1980); *United States Steel Corp.*, 52 IBLA 319 (1981).

The requirement for BLM examination and reports was summarized in *Kosanke Sand* as follows:

> "That the Secretary is not required to file an environmental impact statement as a condition precedent to issuance of patent does not foreclose consideration of environmental costs in the resolution of the issue before us: whether each of the claims is in fact valid by reason of the discovery of a valuable mineral deposit within it's limits. To the extent Federal, State, or local law requires that anti-pollution devices or other environmental safeguards be installed and maintained as part of the process of extraction and beneficiation of the minerals contained in the claims, the expenditures made necessary by such protective measures may properly be considered in connection with the issue of marketability, as part of the costs in determining whether appellant has a reasonable prospect of success in developing a valuable mine within the claims."

If not provided in the patent application, a flow sheet of operations is requested from the applicant, or prepared by the BLM mineral examiner and the applicant in the field. This flow sheet of actual or proposed mining, processing, and reclamation operations is essential as it sets the parameters for mining, mineral separation, refining activities, mining waste, and water use and disposal. Sampling procedures and analysis of the samples should reflect the manner of mineral recovery operations shown on the flow sheet. The economics of the operation can be better understood and defined when the operation is set out in a process flow sheet. Examples of flow diagrams are shown in Figures F-8, F-9, and F-10 on Pages 158-160.

Sampling Procedures

After review and/or preparation of geologic maps, verification of the quality and quantity of the mineral deposit supporting the discovery is undertaken by the mineral examiner. This is done by sampling selected areas of the deposit. As previously mentioned, proper sampling and sample processing are critical to developing the right recovery process. It is important to obtain all information as to size, distribution, grade, interfering minerals, hardness, roundness, and impurity content, to name just a few essential considerations.

This information is necessary in order to assess the viability of the mining and mineral processing methods and reflect the best picture of a deposit. It is not the intent of the BLM mineral examiner to make a discovery for the claimant, however, in addition to samples taken by the mineral examiner they will sample wherever a claimant wishes as long as it is safe to do so.

The mineral examiner cannot be expected to make a decision about mineral quality and quantity if the methods used to gather and evaluate data are not up to industry standards. For example, a one-dimensional sampling pattern along the exposure of a vein or structure cannot provide grade results to depths below the area of influence of the surface samples. A prudent decision to invest time and money in the project with the expectation of a return on that time and money cannot be made without proper data. Drilling, trenching or subsurface development would be needed to assess the quality and quantity of the deposit, thereby allowing for a three-dimensional measurement of the mineral. Lacking evidence of additional mineralization, a discovery may not have been made unless the value of the near surface material was great enough to stand on its own.

There are major differences in the evaluation of metallic and nonmetallic minerals. Nonmetallic minerals yield a high percent of their bulk as the final product (e.g., limestone, talc, gypsum) and metallic minerals yield only a small portion of their bulk to the final product (this applies to most metallic deposits, including gold placer deposits). Sampling and further analysis of the samples must reflect these differences. Sample locations are noted on the geologic and mine workings map(s). Photographs, notes and sketches are made of the sample sites. Samples are secured by the mineral examiner until processed internally or sent to commercial laboratories.

Where mineral deposits are too large and complex for the BLM to appropriately sample (e.g., bulk disseminated metallic mineral deposits), a number of data needs may be used to assist in verifying discovery. All require the assistance of the applicant and may incorporate analysis of drill logs, deposit modeling, mine or pit design maps, sampling of head and tail process streams, utilization of operator equipment, and in some extreme cases, new drilling or sampling by the applicant to "fill in" data or information gaps. Patent applicants with complex deposits should anticipate the data needs supporting their discovery and tailor their submissions accordingly. For example, the relationship of their deposit modeling or pit design models to mining claim boundaries is critical. Also, condemnation drilling or other work supporting the nonmineral character for mill site applications may be required.

Errors in estimating the gold value of a placer deposit can occur if the sample volume is too small. It is especially true if the gold nuggets to be recovered are large and the distribution in the gravel is small. This "nugget" effect must be compensated for by adequate sample size, whether it is in terms of volume as in a river terrace deposit, or time as in dredging a stream channel. What is important is that output of sample material in the sample recovery circuit be sufficient to minimize the nugget effect. Although this effect can be very noticeable in a placer gold deposit, its effect also can occur in vein or disseminated deposits.

It is also important that the sample size be sufficient to minimize the effect of random distribution of gold particles within a placer deposit. For example, there are approximately 270 12-inch pans per cubic yard of dry loose gravel weighing 1.35 tons per cubic yard (an official BLM measurement). Consider a deposit sampled by taking four 12-inch pans from the face. A variance of one 40 milligram piece of gold in the medium size range (approximately 2mm) may over- or under-evaluate the deposit by about $28 per cubic yard (gold at $360 per troy ounce; $0.01 per mg.) For a one-half cubic yard sample of the same deposit (135 pans), a one-piece variance would represent an over or under evaluation of $0.83 per cubic yard; a one cubic yard (270 pans) would be represented by $0.42 per cubic yard. This illustrates that sample size does have a direct effect on the gold value assigned to the sample. In addition, larger samples lessen the effect of random and low particle distribution in the sample through taking more of the deposit. About 100 pounds per linear foot of thickness and about one-half or more cubic yard of material has worked well for the authors in sampling this type of deposit (provided the samples are properly spaced). See Tables T-6, T-7, and T-8 on Pages 136-138.

Another problem with quality control in sampling occurs because of a more uneven distribution of gold value in the rock host material. Here, adequate sample size and sample distribution are a hand-in-hand requisite to a representative evaluation of the deposit. Extreme examples of vein-type distribution are seen in pocket lodes and disseminated vein-type deposits. Sampling of this type of deposit should be tailored to reflect the model identified for the type deposit encountered. Many deposits may require closely spaced samples. Fewer samples along the vein or deposit will be needed if the values are consistent in the deposit.

Sampling Analysis Factors

Critical in the analysis of the quality and quantity requirements is the measurement and sampling of the deposit. In small and large operations, tons and grade of each deposit must be known in order to assess the potential for development. Criteria by field measurements and sampling of the deposit can be developed by tailoring procedures and precision of sampling and analysis to a knowledge of the gold depositional and mining/processing models. Whatever the manner of analysis conducted, it should reflect the method of recovery used or proposed by the operator.

In the analysis of lode samples, sample size also has an important effect on ore grade. Table T-8 on Page 138 shows the relationship between ore grade, sample size required and screen mesh of the sample to achieve a predetermined accuracy of sampling. This inherent sampling error is in addition to errors of the fire assay-induced coupled plasma procedures. Since, in a proper fire assay, these are usually small in comparison to the intrinsic sampling error, they can be ignored in ore grade material. For very small samples or for low grades of ore, the various analytical errors predominate and the tables are only approximate. This table was calculated from Gy (1981) on ore sampling and assumed a particle size up to the mesh size. Consequently, for a "Carlin" type ultra fine gold ore, these values over-estimate the sample size required. Gy (1981) also had to make many other simplifying assumptions which do not occur in the real world, so the values should be considered only intelligent estimates.

Care must be exercised when analyzing placer concentrates. Commonly, individuals will apply fire assay and less commonly atomic absorption or induced coupled plasma methods, to analyze their concentrates for deposit value. Because of the nature of the size distribution particles within the deposit (fine to coarse range), the nugget effect plays an even greater role in the over- or under-evaluation of the deposit. In addition, when utilizing fire assay, an over evaluation occurs because recovered free gold does not include gold combined with other minerals and not recoverable by amalgamation, such as sulfides (pyrites) or gold in magnetite. After amalgamation, fire assay of concentrates to determine gold tied to other minerals could be used. If high gold values are found in the concentrate, then hydro-metallurgical methods may be used to obtain those values.

Care should also be exercised to avoid the nugget effect in the analytical procedures when analyzing lode samples. For example, the choice of most mineral examiners is a fire assay when analyzing lode samples from small gold mines. However, some individuals will apply atomic absorption or induced coupled plasma methods when assaying the total sample. In a one-ton fire assay about 29 grams of sample material are used in the analytical procedure. For atomic absorption/induced coupled plasma methods, from six to ten grams of sample are used, or one-third to one-fifth as much as used in a fire assay. Therefore, errors due to the nugget effect could be magnified from three to five times when using the atomic absorption/induced coupled plasma method over fire assay. For each milligram variance in a one-tone fire assay, an under- or over-evaluation of one ounce per ton may be realized. This same variance in the small atomic absorption/induced coupled plasma sample would be magnified three to five times, for an over-or under-evaluation of three to five ounces per ton.

Industry practice should be used to develop a sampling program that best reflects the true picture of the deposit. It is the BLM practice to obtain all the geological information possible prior to sampling and to follow industry practice in sampling and analysis insofar as possible. The BLM regards sampling and related procedures to be of critical importance because errors can result through selection of sample sites, methods of sampling, size of sample taken, sample preparation, and analytical techniques used.

Field and Office Schedules for Validity and Patent Examinations on Mining Claims and Mill Sites

The following are the steps taken and the procedures followed during the pre-exam phase:

1. Examine case file for information and completeness;
2. Obtain and examine legal, data, mining claim recordation files, location notices, Notice of Intent to Hold (NOI) or patent, assessment work forms, and encumbrances of title;
3. Check mineral survey plats and field notes;
4. Assemble and examine topographic maps, geologic maps, and aerial photos;
5. Assemble and examine technical references concerning geology, mineralization, mining, and mineral economics;
6. Obtain and carry mine and trench safety orders;
7. Assemble all needed field equipment;
8. Appoint a lead examiner if more than one mineral examiner participates; the lead examiner must be certified.

The following are the steps followed for the examination:

1. Make arrangements with claimant at least 30 days in advance of field visit;
2. Meet with claimant and discuss examination procedures and practice;
3. Make diligent search for claim corners and discovery monuments;
4. Walk the claim and get a "feel" for it; make sure mine workings and structures are safe for entry;
5. Prepare geologic map of claim or verify already prepared geologic maps, preferably on a topographic map:
    a. Map and plot physical and surface features -- claim monuments, rock units, and structures;
    b. Map and plot mine works and geological features;
    c. Map and plot underground works -- including the geology;

    d. Verify and identify improvements and work that totals at least $500 per claim;

    e. Take numerous photographs -- all claim corners, monuments, geologic and mining features;

6. Analyze discovery area:

    a. Pay special attention to details -- ask claimant to identify areas (make sure they are on claim);

    b. Prepare or check maps, sketches, conduct sampling, in appropriate manner and at appropriate scales;

7. Work up maps and sketches in field to eliminate need for a return trip; take proper field notes in proper format;

8. Gather all information possible from claimant, such as reports on technical and economic data, costs;

9. Photograph and sketch all mill and plat facilities; obtain flow sheet if available; make one if not;

10. Write up all data in report with full disclosure for technical reviewer; confidential data can be summarized or pertinent parts quoted.

Mineral Examinations by Non-BLM Agencies and Consultants

The USFS, an agency within the Department of Agriculture, has authority over surface management activity on mining claims on National Forest land. By a Memorandum of Understanding (dated May 3, 1957), between the USFS and the BLM, an agency within the Department of the Interior, certified mineral examiners of the USFS conduct the necessary field examinations and prepare mineral reports with conclusions and recommendations for further action for the patent application covering claims on National Forest land. However, the Department of the Interior is solely responsible for ensuring that all requirements of the patent process have been met.

The BLM will issue patent when the mineral report concludes that all elements of the application and requirements of law have been met. If the elements of a contest are present in a USFS report, the BLM will initiate a contest action based on the findings in the conclusion of the report.

Field examinations and mineral reports can also be provided by consultants hired by a patent applicant. This action is sometimes preferred by applicants in order to expedite the patent process. The consultant's mineral patent report must be reviewed for adequacy by the BLM. These reports should conform to the BLM standards for mineral report preparation, and the field examination conducted in accordance with established and accepted practice of industry and the BLM.

ECONOMIC EVALUATION FOR VALIDITY OF MINING CLAIMS

Introduction

For economic evaluation of mining claims, it is the BLM's task to determine whether or not a discovery of a valuable mineral deposit exists. The BLM must describe and evaluate the nature and extent of the mineral deposit and what parts of that deposit are within the boundaries of each lode mining claim and each 10-acre parcel of a placer mining claim.

To accomplish this task, the BLM needs to show whether or not an existing mining operation, or a proposed operation, has economic viability under the mining laws and regulations, and therefore valid mining claims. This is accomplished using an income approach to value through analyzing inflows and outflows of cash over the projected mine project life using simple or complex discounted cash flow techniques. The time value of money, rate of return on investment, escalation and risk factors, and tax elements are critical and most influential in the BLM analyses.

Before economic analysis can begin, important concepts must be considered. They are legal entities, land status and use, geologic and mineralogic relationships, mining, milling and processing techniques, market and market entry studies, reserve analyses, capital and operating costs, royalty rates, royalty buyouts, and exploration and development costs.

Whether one claim is owned by a single miner, or hundreds of mining claims are owned by a large corporation, the BLM applies thorough, fair, consistent, and appropriate economic concepts.

Legal Framework for Economic Evaluations

Federal statutes do not provide a definition of, or describe what constitutes a discovery of a valuable mineral deposit. This lack of a definition has resulted in judicial and administrative declarations.

Following are highlights of a few critical tests and rules:

> The first is the "prudent person test," based on an 1894 Department of the Interior case that defined a valid "discovery" of a claim. In that case, the Secretary of the Interior stated that discovery met the requirements of the statutes when the additional expenditure of labor and means by a person of ordinary prudence might result in a reasonable prospect of success in developing a valuable mine. This was supplemented by the marketability test given in *U.S. v. Coleman* in 1968. The Supreme Court said profitability is an important consideration in applying the prudent person test. What prudent person would invest in an unprofitable venture? However, how much profit was not specified. We expect that a mineral operation is realizing, or could realize, a reasonable profit or that it can realize a reasonable profit. Timing for selling prices of commodities is now a supplement to the marketability test, courtesy of the IBLA in 1983. Parties are not locked into daily price quotes, but can take a perspective view of average and expected prices over an appropriate time period. Charts for commodities such as gold should be prepared to aid in arriving at reasonable prices for individual mineral operations.

There are situations where critical time periods in addition to the present time period (as of date of application for mineral patents) must be considered for economic evaluation. These are:

1. Mining claims that have had some type of withdrawal placed over them after their original filing date;

2. Mining claims in a wilderness study area (WSA) or a wilderness area where the BLM uses the critical date of October 21, 1976 (passage of FLPMA);

3. Mining claims that were located on or before July 23, 1955;

4. Whenever the claimants of association placer mining claims have reduced the number of original claimants required for appropriate original filing.

Specific conditions exist for placer claims. One discovery of a valuable mineral deposit per placer claim of any size is sufficient. However, after discovery of a valuable deposit, each 10-acre area must be examined for its mineral-in-character nature by geological inference. IBLA says that "mineral in character" means that known conditions are such as reasonably to engender the belief that the land contains valuable minerals. Belief can be based upon geological conditions, discoveries of minerals in adjacent land, or any other observable external conditions upon which persons of prudence and experience are shown to be accustomed to act. IBLA also says that the claim must be subdivided to create square 10-acre parcels, to the extent possible, regardless of whether the claim, as laid out on the ground, conforms to the system of public land surveys.

Income Approach for Economic Evaluation

Basic Concepts

In this approach, income is converted into an estimate of value through economic analysis by means of cash flow or discounted cash flow (DCF) modeling. The basic assumption is that a mineral deposit is valuable because of the money income it will produce. It cannot be automatically assumed that money is available for developing the deposit, and financial analyses may be necessary. There are several basic concepts used in the income approach, follows:

> Capitalized (projected) future income is converted to value, based on the assumption that a mineral deposit is, or can be, extracted for the future income it will generate.
>
> Future income is less valuable than present-day income because of the time value of money, risk involved (likelihood of receiving income), required discounted rate of return through project life years, and the time period for return of the original investment.

In this approach, the duration and quantity of income must be estimated. If the mineral deposit has been in production for several years and the only time period of evaluation is the present, it is necessary to enter this in with the analysis as best as possible at the start of the present time period. For economic evaluations for past time periods, mineral examiners have a difficult task and must do the best they can with historical, technical, and economic data.

A cash flow is an analysis of actual or prospective net inflow/outflow of money that occurs during a specified time period. That is:

> Gross revenue minus operating expenses, taxes, and capital costs will equal cash flow.

Discounted cash flow is a method where a potential cash flow is discounted at a given discount rate over the time of the economic evaluation. The discounted values of the annual cash flows, usually no more than 20 years of productive mine life, are added cumulatively to obtain a net present value.

Mineral deposits have real value only because of the presence of reserves. All costs for improvements, reclamation, equipment, and real and personal property used for the production of reserves must be balanced against income. If a mineral cannot be extracted at a project, there will be insufficient future income, and therefore no value.

It is not implied that improvements, equipment, and so forth, have no value in themselves, but rather that their sell-out (depreciated) value is not considered in determining the value of the reserves. The cash flow or discounted cash flow analysis is based on the economic viability of the mineral operation and how much the mineral reserves are worth at a given time under given legal, technical, economic and market conditions.

Projected future annual escalated earnings, with an appropriate discount rate over the determined project life years to determine the after-tax net present value is to be used. If the net present value is positive, then the mineral operation will earn a higher percentage rate of return than the discount rate indicates; if negative, the mineral operation will earn less; if zero, the earning equals the rate of return. After any risk adjustments, the net present value is the basis for determining the fair market value.

Discounted cash flow analyses should not be for more than about 20 years of productive operation life and are adapted, insofar as possible, to the actual system used by mineral operations. If a deposit is not developed, usually one to three years of lead time to production is adopted. To carry an economic analysis for more than 20 years of productive life, even though reserves may have a greater life at the projected rate of production, is not generally tenable. The 20-year future value of a dollar today, at 15%, is only about $0.06. In addition, risk factors, adequacy of escalation rates, and the discount rate used are already stretched at 20 years of life. Finally, there is no minimum rate of return or net present value specified by law or regulation.

Appropriate tax framework must be used in the discounted cash flow analysis. Many actual, or proposed mineral operations that do, or could, operate on Federal lands are large corporate ventures requiring the use of corporate tax frameworks, rather than individual tax frameworks.

Consideration should be given to expenses (deducted fully in year incurred) and capitalized (not taken in year incurred and over more than one year), costs, loan interest, amortization concepts, and any loss carried forward. Some reproduction costs may have to be sunk. Most of the time, the value of depreciable cost items is recovered by using the Modified Accelerated Cost Recovery System, based on a seven-year property.

Depletion allowance benefits are usually recovered by percentage depletion at the appropriate percent of net revenue from commodity sales. Of course, the deduction for depletion cannot exceed 50 percent of the taxable income after all deductions, except depletion and deduction for net operating loss carried forward. Where depletion allowance exceeds the 50 percent limit, the 50 percent limit figure is usually used in computation of taxable income.

State and/or county tax frameworks vary and must be accounted for adequately. For example, California property taxes are *ad valorem* (at value), making an actual figure impossible to use as an input to the discounted cash flow, unless actual data from company records can be used. Therefore, it is reasonable to estimate these taxes at one percent of the net revenue on an annual basis. Where an operation is ongoing, the actual tax framework elements should be used to help determine value. Where there is no operation, but one is feasible, the mineral examiner should generally use full rates in consideration of tax framework items. A fair market value determination on mineral operations before taxes is improper. The tax framework is of major importance and must be considered fully, because it can drive an apparent profitable operation into one with a negative cash flow.

Use of Discounted Cash Flow Model for Analysis

Properly determined input data and considerations must be used and/or verified, and placed in an appropriate economic model to make the income approach to value realistic. If there are no facilities developed adjacent to the mineral deposit, then inputs must be developed from scratch using Mining Cost Service, trade magazines, technical, economic, industrial, and tax literature, and, most importantly, the mineral examiner's experience. If an ongoing operation exists, then most information can be verified by checking statements, purchases, reserves (grade and tonnage), production, costs, income, taxes, and other financial records, as appropriate. Where data cannot be verified, or verified only in part, the appraiser must determine inputs and go on with the analysis.

Depending on the complexity of the deposit or the mining operation occurring or projected, information to be used in the economic analysis of the deposit may be acquired from a proponent and/or acquired through field investigation of the property. Any information acquired from a potential or actual operator must be verified to assure its application and acceptance in the economic analysis.

It may be necessary for an operator to provide specific information or analyses that may be requested by the mineral examiner to independently verify data. In large operations, the complexity of data supporting reserve estimation, pit design, and mining feasibility provides small opportunity for "fixing" or "rigging" data. Correlating known pieces of information from the data allows a check for verification purposes. For large bulk disseminated gold deposits, company data may be required to correlate the exploration reserve grade model, production records, and blast hold model. For small mines, verification of data usually rests with the mineral examiner's sampling, testing, and modeling.

It is important that the mineral examiner analyze and describe the deposit grade and tonnage from data acquired during the examination of the property. Verification of these data should be discussed in the report, including which method of verification was used, confidence of the examiner's verification data, and whether the information obtained by the proponent is acceptable to be used in the economic analysis of the deposit.

The discussion should focus on the data acquired by the mineral examiner and how they correlate to information on the property provided by the proponent. For large disseminated gold operations, comparison of drill hole data, deposit grade and tonnage model(s), and production logs or reports can be used to verify the acceptance of the technical and economic data provided to the examiner. This information may be included as attachments to the report. Illustrations should show examples of deposit grade and tonnage models, drill hole grade calculations, and pit design. All this information should be used to correlate grade and tonnage figure for acceptance in the economic analysis.
Discuss any variance in data, and include a discussion on which data will be considered by the examiner and why other data provided by the proponent will not be considered in the economic analysis.

Also, include a discussion of any data that cannot be totally verified and must be accepted as provided. This includes specific proprietary operating costs, associated feasibility studies, tax allowances, deductions and credits, and other information. If verification cannot be made, the report must address these issues. Discuss the effect the data may have on the conclusions if the data are not used. Also, discuss any data that are inaccurate, dated, or incorrect.

Present the data and analyses in a logical and structured way before use in the discounted cash flow model. Use projected future annual escalated earnings with an appropriate discount rate over the determined operational life in years to find the after-tax net present value. Appropriate tables and graphs must be presented.

All assumptions, concepts, and data in regard to input items used in the analyses must be explained. The main elements of concern for analysis are:

Mineral commodity uses
Market and market entry studies
Rate of production, grade, and recovery factors over time of analysis based on tonnage and grade factors, market entry, and waste factors
Selling prices of products (freight on board), escalated
Gross and net revenues
Operating costs, escalated
Exploration and development costs
Depreciable, nondepreciable, and working capital costs (including reclamation and environmental costs), escalated
Tax elements (corporate or individual), such as State or county income tax, Federal income tax, loan interest, depreciation, depletion, and amortization
Net incomes
Operating cash flows
Salvage value
Cash flows (CF)
Escalation rates used (general inflation rate should not be used).
Discount rate (DR) used
Net Present Value (NPV)
Risk factor

Table T-9 on Page 139 shows a discounted cash flow model format developed by J.R. Evans.

Some Technical Considerations for the Discounted Cash Flow Model

Reserves

Simply put, reserves are the measurable amount of suitable grade minerals that can be extracted at a profit. Calculation of the quality and quantity of reserves is critical for a mineral report. All terms used in regard to tonnage and grade of reserves must be clearly defined. Average grade, cutoff grade, sample area influence, and so forth, are examples of critical terms.

Methods used to present tonnage and grade models will vary with different types of deposits. All units of measure should be shown in computations, tables, and illustrations when compiling grade and tonnage information. This provides a calculation check for the reader and helps to integrate the information with other parts of the report. All units of measure should be compatible with accepted industry practice for the type of deposit under investigation. For example, units of grade for lode gold deposits should be in troy ounces per ton, instead of percent; units of grade for placer gold deposits should be in dollars per cubic yard, instead of dollars per ton.

Methods and models used to determine grade and tonnage, and mining blocks must be fully described. Illustrations should be used so the reader can easily see the distribution of different grades within the deposit. Geology and other maps and cross-sections should be used to illustrate the locations of sample and/or drill sites and the amount of influence of each site. Tables, complete with full title and accurate sample numbers, to show grade calculations and tonnage or volume assigned to blocks of influence are essential. Additional maps and sections to illustrate the distribution of material of different quality in the deposit as a whole can also be used.

Waste Factors and Recoverable Material

Actual and projected tons and grade of material are entered for each project life year of production. The recovered material is key and reflects the sales product after the recovery (waste) factor is applied. Production rate and production time are based on market entry (share), amount of reserves, and waste factor. Mineral examiners must determine to the best of their ability how much of the recovered material is entering, and can in the future enter the market place for sale. If the commodity is gold, the assumption is that it can be sold in its entirety. If the commodity is carbonate rock, the amount that can be sold annually by individual use must be determined through a study of past production records and/or a market entry study based on product specifications, demand, and market share. Future sales can be documented through contracts or letters of agreement assuring future purchases. With no contracts or agreements, a mineral examiner is left to his own initiative to decide on market entry possibilities.

Market and Marketability

Preface

Marketability is the ability of a mineral product to enter a market place for sale. The appraiser should describe the factors that affect the ability of the mineral products that are, or can be sold in a market place. Each product's use should be described. Minerals can occur either as small percentages of the rock in place, such as metallic minerals, or as minerals which comprise the bulk of the rock in place, such as most industrial minerals. High price commodities, such as precious and other metals, generally do not compete for market shares and, therefore, do not require a marketability analysis. Market entry is assumed. However, a market entry study is usually required for nonmetallic minerals because strong competition is required for a market share.

Market Analysis

Because of the significant difference between metal and nonmetal markets, a few broad concepts for consideration are listed below:

For metals:

Valuable material may be only a percent or less of total material mined;

Usually significantly more money for capital is required for the sophisticated mining and processing equipment needed;

Usually operating costs are higher;

Deposit can be remote from marketplace and still be economically viable;

Analytical testing mainly for metal content is relatively cheap; many labs available to do testing;

Transportation costs for processed or refined metals are a very small part of the sales price;

Sales price is quite high compared to nonmetals;

All metal produced can usually be sold.

For nonmetals:

Valuable material is the bulk of material mined;

Usually less capital money required for mining and processing equipment than for metals;

Operating costs are usually lower than for metals;

Analytical testing for chemical and physical properties is involved and is relatively expensive, but few labs available to do testing. Some tests usually required are:

Color
Brightness
$CaCO_3$
PH
Free H_2O content
Loss on ignition
Porosity
Permeability
Adsorption
Absorption
Bulk density

Deposits are mostly close to the marketplace so as to be economically viable;

Transportation costs are usually a significant part of the sales price of processed materials. Bulk freight on board sales can be made and transportation costs are then negligible;

Sales prices are almost always quite low compared to metal prices;

In contrast to metals a highly competitive marketplace has to be entered. This is no guarantee that processed material can be sold. A seller may have to literally take away business from a competitor through several means:

1. Produce a superior quality product in terms of physical and chemical characteristics;
2. Produce and process a wider variety of quality, and even new, end products;
3. Provide better overall service, more timely delivery of product, better salesmanship, management innovation, more highly trained staff;
4. Provide lower sales prices of end product through efficiency in reducing capital and operating costs, energy costs, and environmental costs;
5. Provide more sales potential with larger and innovative processing plants.

Marketability Analysis

The following options must be considered in a marketability analysis:

Market Area. The market area is of real concern as it refers to that general area in which the mineral commodity can be sold. For example, gold and petroleum can have worldwide markets. However, sand and gravel operations may have a market area with a radius of 10 to 25 miles.

Data should be presented in map or plat form, showing the real limits of the market area. If the market area is large, or undefined, the description of the general area should be given in narrative format. The description should include the farthest sales point and the area where most of the commodity is sold.

Selling Price. Selling price of an individual commodity such as gold, or the weighted average selling price of a group of related commodities, such as aggregates produced from the same plant, must be confirmed for an actual operation, or determined for a proposed operation. The unit of time is generally one year. Selling prices are determined as freight on board, meaning the first possible point of sale price without any value-added items such as transportation or packaging. For example, the selling price of processed concrete sand is determined as that price charged to a customer leaving the plant yard and assessed across a weight scale, not the price of concrete sand delivered 10 miles away or as mixed in concrete with cement and other aggregates. Selling prices should be adjusted on an annual basis.

Where a variety of mineral commodities is to be sold at the same plant at quite different freight on board prices, a weighted average selling price (assuming equal sale amounts) can be approximated by use of the geometric mean (GM) formula.

$GM = N\sqrt{A+B+C}$ A,B,C, equal different products at their FOB list prices ($)

N = number of different prices

With this formula, an equal sales amount for all products is evaluated. Remember, it is an approximation.

Product Specifications

Mineral products require specific specifications in order to be sold into a market. Even gold must be 99.9% pure. Nonmetallic minerals can be very difficult in regard to both physical and chemical specifications. For example, limestone may be sold as fillers, extenders, whiteners, cement admixture, and into chemical products. Limestone, for these uses, must meet ridged requirements. Not all limestone can. If it can, then beneficiation costs and market share plus the price of the finished product are critical to a marketability analysis. The mineral examiner must check into product specifications thoroughly and carefully, particularly for nonmetallic minerals.

Market History

Describe and discuss the period when the commodity in question has been sold in the market, as well as the distribution of sales price through the period. Graphic representation of the number of sales, volume of sale, or sales price through time periods must be presented in a concise, easily understood manner.

Market Supply and Demand

There is no question that fair market value is influenced by market supply and demand conditions. There must be a reasonable expectation or actual evidence that the mineral commodity in question can be sold in the marketplace. This market may be local, statewide, nationwide, or worldwide. It is the job of the mineral examiner to determine these market conditions and translate them into terms of how much material can be sold in unit and overall time periods. For example, a market that can absorb 1,000,000 tons of specialty limestone over a 10-year period at a rate of 100,000 tons per year is a good one presuming there are the necessary tons in the mineral deposit.

Market Entry

Indicate whether or nor the commodity is being sold currently in the market. If so, support the sales with copies of sales receipts, and/or statements from buyers, witnesses, or information describing the findings of the mineral examiner. Where there are no current sales from the deposit, market entry must be discussed by the mineral examiner. Contracts or letters of agreement, assuring future purchases at a specified or market price are important documents to use in establishing future market entry. In the absence of any agreements, a mineral examiner must make his own study in relation to market entry. Estimates of the type of products, and the ability of the mineral product in question to be competitive, are of real concern. With no contracts or agreements, a mineral examiner must do his own research on market entry possibilities.

Extraction Rates and Remaining Economic Life

These factors are important because a mineral examiner must know if a proposal of a potential operator is reasonable for the mineral operation in question. If part of a proposal is not reasonable, the examiner must discuss the situation with the mineral interest's owner. If agreement cannot be reached, then the examiner must use his own technical judgment. Where an operation is ongoing, the mineral examiner must understand technical aspects of these factors. All this attention is necessary because capital and operating costs must be obtained for inputs to the economic analyses.

Actual and projected tons and grade of materials are entered each year for production life. The recovered material is key and reflects the sales product after the recovery (waste) factor is applied. Production rate and the length of production time are based on market entry (share), amount of reserves, and waste factor. The mineral examiner must determine to the best of his ability how much the recovered material is entering and can in the future enter the marketplace for sale. If the commodity is gold, the assumption is that it can be sold in its entirety. If the commodity is, for instance, carbonate rock, all that can be sold annually by individual use must be determined through a study of past production records and/or a market entry study based on product specifications, demand, and market share. If material is not being sold, then future sales can be documented through contracts or letters of agreement assuring future purchases.

A reasonable extraction rate for the mineral operation must be determined. The extraction rate is mainly a function of market, reserves, waste factors, costs, ability to technically extract, and the amount of time over which extraction will take place. For most operations, 20 years of productive life is the maximum life that should be analyzed, because of the time value of money.

There must be sufficient reserves to last the timeframe under consideration with the stipulated extraction rate. For example, if it is determined that there are 20 million tons of reserves that can be extracted at a rate of 1 million tons per year, then there would be just enough reserves to last 20 years. However, if the extraction rate is increased due to market demand, then the economic life of the mineral operation will be reduced proportionately downward, unless new reserves can be blocked out. New reserves can be blocked out depending on such things as operating and new capital costs, an increase in the selling price of the commodity extracted, and the actual occurrence of the commodity in question with the proper quality (tons and grade).

Income is the key here, and the economic or remaining economic life of a mineral operation for income generation is critical for the examination and must be examined or determined with great care.

Major Components for a DCF Model

Cash Flow (CF)

This is an analysis of actual or prospective net inflow/outflow of money that occurs during a specified time period.

That is:

Gross Revenue
- Operating expenses
- Taxes
- Capital costs
= Cash flow

Discounted Cash Flow (DCF)

This is a method where a potential CF is discounted at a given discount rate (DR) over the time of the economic evaluation. The discounted values of the annual cash flows, usually no more than 20 years of productive mine life, are added cumulatively to obtain a net present value (NPV).

Internal Rate of Return (IRR)

A discount rate that will fix the present worth at zero is called an internal rate of return (IRR). If the rate of return is less than the discount rate used, then the mineral property may be a poor investment. Conversely, if the rate is greater than the discount rate used, the investment could be a good one.

Discount Rate of Return (DR)

In valuing mineral properties, a discount rate is generally considered synonymous with "cost of capital," "opportunity costs of capital," and "minimum acceptable rate or return on investment." The rate of return is used to convert an income stream into value and should represent an acceptable rate of return to be realized on generally similar mineral property investment opportunities with reasonably similar risk factors. Inherent in the concept is that a person or corporation passed up an opportunity to invest in other similar mineral investment opportunities to invest in the property in question. Also, a high rate of return can be used to attract outside capital to a mineral investment.

A discount rate is the measure of the time value of money over the operating years of the economic analysis. The rate selected should be based on the annual future rate of return anticipated (by the investor) on the investment and, over the life of the project, represents both the anticipated return on the investment and the recapture of the investment itself. For an operating mine, it is important to determine what rate of return has been obtained, for example, for the past five years and what is anticipated and appears reasonable for the mine operation to achieve in the future. Many discount rates from industrial mineral operations will reflect value added sales, so care must be taken to find out details and work towards a lower rate if necessary.

The determination of a proper discount rate for analysis of mineral investments is often difficult. There are few direct sources of discount rates available, and rates for mineral investments of a 20-year term are generally lower than for short-term real property investments. Short-term investment rates, bonds, and so forth are not appropriate for the longer term of mineral investments. Mineral rates should be compared with mineral rates and obtained from mineral operations.

There are certain concepts that should be considered when selecting an appropriate discount rate for use in your economic analysis through comparison with other discount rates on operating mines.

> Length of time of the analysis (5, 10, 15, 20 years) is a key factor. A rate may well be higher for a short term analysis. If a rate is selected by comparison with other rates from operating mines in industry it is critical to know where in the time frame of the mineral operations the rates are usable. It is possible that the mine is in the early stage of operation and large sums of initial sunk capital are in the process of being overcome. Some of this sunk capital may be for mine plan and reclamation studies and bonding, for research and development studies, and a decrease in sales price of products - all resulting in time delays and loss of projected income. In this case the rate, if analyzed on a yearly basis, will be significantly lower than in later stages when these sums are overcome through project income.
>
> Selling prices of products, particularly with industrial minerals, can vary year by year, and will cause an increase or decrease of income which can affect a calculated or actual rate examined on a yearly or short term basis.
>
> Are discount rates real, or increased by adding in points for inflation, escalation, and/or risk?
>
> See if the rate you select is at or above income financial rates such as those for T-Bond income. If the discount rate is at, or below these rates it may be an improper rate for a mining operation, particularly because these financial rates are almost always risk-free.
>
> Make sure you know if any rate to be used for comparison was determined before or after taxes.

The best test for reasonableness of discount rate is comparison with rates in use by mineral producers. As challenging as this is to do, a concerted effort must be made by the mineral examiner to obtain a rate that is reasonable and appropriate for the property in question. In this, there is no substitute for the personal knowledge and experience of the examiner. Different commodities will require different rates as there are usually great differences in the processing costs, capital expenditures, and selling prices from which the rates are obtained.

As used here, the discount rate reflects an annual percentage rate of return on invested capital used to determine net present value. The rate discounts future cash flows to present worth.

A discounted cash flow (DCF) for each individual year of analysis can be calculated as follows:

$$PV = \frac{FV}{(1+DR)^{t}} + \frac{FV}{(1+DR)^{t+1}} + \frac{FV}{(1+DR)^{t+n}}$$

$$PV = \frac{1}{(1+DR)^{t}}$$

PV = Present Value ($)
FV = Future Value ($)
DR = Discount Rate
t = Time; mid year ½..1½.. 2½, or end of year, ...1...2...3..., etc.

For example, say $1 at 12% (mid year)

$$PV = \frac{1}{(1 + 0.12)\ ½} = 0.9449,$$

and $1 at 12% (annual)

$$PV = \frac{1}{(1 + 0.12)\ 1} = 0.8929$$

Inflation and Inflation Rate

Inflation refers to the decline in value of money as measured by what it will buy (generally measured by Consumer Price Indexes (CPIs) published monthly and yearly by the U.S. Bureau of Labor Statistics). Inflation is in dimensionless numbers, but expressed as a percentage rate. This index is developed by examination of costs of "basket of goods" items. Price increases alone do not mean that inflation occurs because the price increase may be accompanied by an increase in productivity. Productivity increase is possible with some mineral operations that are able to conserve, consume less, or use low cost substitutes, but overall the CPI does not reflect these concepts.

Escalation and Escalation Rate

Escalation refers to a change in price or value through time on an annual basis for specific items such as selling prices, operating costs, nondepreciable and depreciable capital costs, and royalty rates that do not rise or fall at the same percentage rate. Because these prices and costs rise at different rates, a discounted cash flow or other economic analysis should not be influenced by a single overall rate of inflation. Costs, prices, and rates should be escalated at different rates in order to reflect the differences and made economic analyses closer to the truth.

Mining and milling and other costs indices of the U.S. Department of Labor Statistics and actual history of mineral operations can be used to determine different escalation rates for discounted cash flow analysis.

Different (historic) escalation rates, expressed in percentages, can be computed from the last five years of different cost indices. For example, say the Mine Labor Index for 1987 is 12.52 and for 1992 is 14.12; the expenditure is $100,000.

$$\text{So } \$100{,}000 \text{ X } \frac{14.12}{12.52} = \$112{,}780$$

The average annual increase is:

14.12 - 12.52 = 1.60, and

1.60/12.52 = 0.128 or 12.8%, and

12.8%/5 yrs. = 2.56%

or, 1.60/5 yrs. - 0.32, and 0.32/12.52 = 0.0256 or 2.56%
or (112,780 - 100,000)/$100,000 = 0.1278/5 yrs. = 0.0256 or 2.56%.

From the different indices for different subjects from 1988 to 1992, an average percentage rate increase can be calculated for each different cost. These percentages are considered the escalation rates.

These percentage rates are then used to determine escalated dollars for each cost to be escalated by the following formula:

A = FV(1+E) t   FV = Future value ($)
E = Escalation rate (%) - decimal
t = Time (years)
A = Adjusted rate (%) - decimal

For example, a selling price of $3.60 per ton escalated at 2.0% for 20 years is:

A = $3.60 (1+0.020)20 = $5.35

Where nondepreciable capital costs are involved, they usually are not escalated based on the above indices. Often, a rate at or near the overall rate of inflation for the time period of evaluation is reasonably correct. An escalation rate for product selling prices is best derived through examination of the past five years of sales receipts from the mining company in question. If a deposit is not in production, then the industry experience of the mineral examiner is vital for developing a reasonable escalation rate.

An appropriate escalation rate should be included in the discount rate of return, not an inflation rate, as it will be more accurate than the inflation rate. Many market discount rates of return have an inflation component factored in. Consideration of a future escalation rate in the discount rate of return also accounts for depreciation on depreciable future capital costs. If future costs are not escalated, future depreciation will be on a lower price, and the increase cannot be deducted.

Risk and Risk Factor

Risk refers to the possibility of not receiving the amount of anticipated income and/or cash flow during the productive life of a mineral operation and/or experiencing long delays in lead time to first production. Several situations can lead to problems. Some of the more common concepts that should be considered in deriving a risk factor are:

1. Significant grade variability of reserves causing lower income and/or higher operating costs to control mill or processing feed;

2. Amount of reserves less than anticipated resulting in premature mine shutdown;

3. Extensive variance in milling and/or processing techniques needed to account for proper recovery of complex or impurity-bearing mineral materials causing higher than anticipated operation costs;

4. Loss of ability to maintain production, and/or to sell products into a competitive marketplace at anticipated prices resulting in a significant or total loss of market share;

5. Untimely completion of projects with available depreciable capital resulting in missed deadlines and, eventually, loss of income;

6. Planning or permitting (environmental and reclamation) problems causing delays in mineral operation startup and/or delays during operating life. This results in delay or initial income, or reduction of income over operating life of the mineral operation.

To assign a quantitative and objective factor for risk is not possible. Nevertheless, a risk factor of some kind should be assigned to a mineral operation. Experience and managerial judgment of the company in question and the experience and judgment of the mineral examiner are critical to approximate a risk factor. The first few years of any operation are usually the most critical and risky.

A percentage risk factor is applied to the net present value in this system. Risk is not factored into the discount rate, because risk is not reflected adequately through the future value of money and because the above-described situations concerning risk adjustment can be more adequately accounted for by applying a percentage factor to reduce the net present value.

Net Present Value (NPV)

The sum of the present values of all future years' cash flows over the economic life of a mineral property (usually no more than 20 years), after being discounted at a specific discount rate, is the net present value. This net present value takes into account the earning power of money over time. It is an indicator of the fair market value of a mineral property for its projected life with a specified rate of return on investment. A positive value means that invested money will earn a higher rate of return than that indicated by the discount rate. If the value is zero, the invested money will earn a rate of return equal to the discount rate. If the value is negative, then invested money will earn less than that indicated by the discount rate.

Mineral Tax Framework and Calculation

Capitalized Cost is cost not taken in the year incurred, but later through depletion, depreciation, or amortization over more than one year.

Expensed Cost is cost deducted fully in the year incurred.

Amortization is the process of a gradual extinguishment of an obligation by payment of part of the obligation at regular time intervals, usually monthly or annual.

Book (noncash) Deduction refers to a recovery of costs in before-tax dollars through deductions over time, for example, depletion, amortization, and net loss carried forward.

Recapture is the act of foregoing a deduction until some amount of money is recouped.

Depreciation represents the concept that certain income-producing assets do not last, but wear out with time. Therefore, a part of the asset cost can be a tax allowance over time beginning when the asset is placed in service. The Modified Accelerated Cost Recovery System (MACRS) is used nearly always in these analyses. Capital cost type equipment (new or used) for mining ventures that can be depreciated include mining, milling, and processing facilities, vehicles, buildings, furniture, and so forth. See Table T-11 on Page 141.

Depletion is used for mineral extraction analyses because minerals for Federal tax purposes are considered wasting assets. A gradual reduction of the original amount of minerals by extraction and sales through time is then considered depletion. Theoretically, the depletion allowance will return the value basis of the original mineral deposit. Depletion is figured by two methods; one is by cost and the other is by percentage. Taxpayers should use both methods, then select the method that shows the most deduction. In the BLM's analyses, Percentages Depletion is most often used. It is calculated as a specified percentage (by mineral commodity group) of the gross income after royalty payments for the sales of minerals during the tax year. However, the deduction for depletion cannot exceed 50% of the taxable income after all deductions except depletion and loss carried forward deductions (100% for oil and gas). If the 50% value is exceeded, use the 50% value. Allowable percentages are shown in Table T-12 on Page 142.

Full State and Federal Corporation income taxes can be computed together by the following:

$$S+F(1-S)=0.093+0.34(\text{or } 0.35)(1-0.093)=0.3927(39.27\%) \text{ or } 0.4018(40.18\%)$$

S = State Tax, CA = 9.3%
F = Federal Tax = 34.0% (or 35.0%)

Individual Income Tax Rates must be figured on an individual basis.

California Property Tax is an ad valorem tax and as such cannot be figured directly in this model, but can be closely approximated at 1% of the net revenue. Other states have different tax structures and must be accounted for in the best way possible.

Abbreviated Approaches to Economic Evaluation

There are six situations that do not require comprehensive economic analysis. If obviously applicable, or if by preliminary inspection, the mineral examiner thinks one or more of these situations could apply, each should be considered before beginning any comprehensive economic analysis.

These situations are as follows:

1. When no minerals exist, or they exist in such low quantities that it is obvious that no economic analyses are needed. One example of the situation would be a property where platinum group elements are reported by a claimant, but none can be found by using appropriate analytical techniques. Another example would be a situation where appropriate types of numbers of assays of gold show 0.001 ounces per ton.

2. When minerals exist, but cannot meet specifications for the market. An example would be a dolomitic and siliceous carbonate rock that is propertied to be salable for specialty limestone products, but the iron, magnesium, and silica content are too great to beneficiate economically. Another example is a common clay that will not meet the physical and chemical properties required by specialty clays.

3. When capital costs on an undeveloped property exceed the projected gross revenue. An example would be a mineral property with X tons of total minerals at Y grade and Z recovery rate that cannot provide sufficient gross revenue from sales to cover the required cost of capital for placing the property into production. Consider a property that has 400,000 tons of complex gold-bearing material at an average grade of 0.020 ounces per ton with a recovery rate of 80 percent. Here, gross income from sales is:

   (400,000 tons) x (0.020 oz./ton) = 8,000 oz.

   (8,000 oz.) x (0.80) = 6,400 oz., and

   (6,400 oz.) x ($380/oz.) = $2,432,000

   For example, projected capital costs for permitting, mining and processing, equipment, building, leach pad construction, and so forth are about $3,700,000. Although a good part of the capital costs eventually may be depreciable over a seven-year term after any amount of delay in start-up, the tax credit delays, plus necessary operating costs and replacement capital costs, will be too great and insufficient for a viable economic operation.

4. When operating costs exceed projected gross revenue. If operating costs on an undeveloped mineral property or a property in operation exceed gross revenue, then the property or operation is not economically viable. For example, where operating costs per ton are $100 and projected or actual income from sales is $90 a ton, it is not economically viable.

5. When market entry cannot be achieved. An unfortunate situation can arise when dealing with some nonmetallic and metallic mineral deposits. Consider a suitable gypsum deposit in regard to tonnage and grade. It may not be currently economically viable, because the market sales area is too far away, or locally saturated and entry cannot be made without losing money.
   Market entry capability may be fairly obvious, but not always. It may be necessary to perform detailed work on market entry capabilities, because the lowest economic level of freight on board sales prices may not be known without full discounted cash flow analysis. It is also possible that new product specifications may require too large a beneficiation cost to bring the deposit on line economically.

6. When mineral extraction will not be permitted. If the land in question will be or is withdrawn or zoned from mineral entry by government agencies, then mining is not permitted and there is no fair market value for mineral interests. If stipulations are made by the agencies involved permitting mineral extraction after transfer of ownership, as in an exchange, then is it possible to determine the fair market value, or a reasonable royalty rate.

GOVERNMENT MINERAL REPORTS ON VALUABLE MINERAL DEPOSITS (DISCOVERY)

Introduction

A mineral report should contain the written and graphic presentations of findings made during office research, laboratory testing, and field examination of a mineral deposit. It should include documentary text, illustrations, testing results, interpretations, recommendations, and conclusions in regard to the deposit. Reports should be complete and accurate, prepared in a clear and concise manner, and appropriate in tone. Thought and care must be given to the preparation of the report so it will convey to others the impression of competency based on accepted professional standards and compliance with current policies and legal interpretations of the Department of the Interior (BLM Manual 3060; Mineral Reports - Preparation and Review, April 7, 1994).

Report Checks

A. Complete?
   1. Does it give all necessary information?
   2. Does it answer all questions the reader may raise?

B. Concise?
   1. Does it contain only essential facts?
   2. Does it include only essential words and phrases?

C. Clear?
   1. Is the language adapted to the readers and are the words the simplest that carry the thought?
   2. Do the words exactly express the thought?
   3. Is the sentence structure clear and the sentence short?
   4. Does each paragraph contain only one main idea?
   5. Are these ideas presented in the best order and in as few words as possible?

D. Correct?
   1. Is the information correct?
   2. Do the statements conform to laws and regulations?
   3. Is the writing free of grammatical errors?

E. Appropriate in tone?
   1. Will the tone bring the desired response?
   2. Is the writing free of words that may arouse antagonism?
   3. Is it free of jargon and legalistic phrases?
   4. Is the active rather than passive "voice" used?

F. Are the methods of investigation fully and clearly described and compatible with acceptable professional practice?

G. Are the conclusions adequate to the data?

H. Are the conclusions supported by the data?

I. Is the purpose of the report clearly stated?

J. Is the report well organized?

K. Are illustrations pertinent, legible, and adequate?

L. Is the Summary-Conclusions section appropriate and effective?

Report Format

No standardized format will do for all mineral reports, but there are many items that should be in all reports. Table T-12, Page 142, shows an outline of possible topics in a validity or patent mineral report.

Consultant Mineral Reports

Qualified private sector consultants can conduct mineral examinations and prepare mineral reports for mineral patent applicants. These reports are subject to the same concerns for accuracy and professionalism as are reports by Federal governmental agencies and should meet the BLM standards.

TECHNICAL REVIEW OF MINERAL REPORTS

Introduction

After a government mineral report is completed and preliminary technical reviews made, it is submitted to the BLM California State Office certified review mineral examiner for final technical review. The technical reviewer is charged with ensuring that professional and technical procedures have been followed and the basis for the conclusions is in conformance with the requirements of the mining laws.

The technical reviewer assures that reports are objective, complete, accurate, and clearly and concisely prepared. Thought, care, and hard work must be given to the preparation of a report. The reviewer must see that the impression of competency is based on accepted professional standards and ensure that the report is in compliance with legal and technical standards, guidance, and procedures. He or she also ensures that the author communicates effectively and in an appropriate tone to the reader.

Goals

Broadly, the goals of a technical reviewer are to assure that:

1. Purpose of the report is clearly stated and accomplished;

2. Assumptions and limiting conditions are given adequately;

3. Legal, technical, and economic data are accurate, adequate, and support the conclusions and appraised value;

4. All supporting documents are included;

5. Illustrations, attachments, and tables are appropriate and complete;

6. Extraneous material is removed;

7. Confidential data are removed from the report and sent under separate cover;

8. Remember, a report must stand alone, and a summary of confidential data may have to be made.

Technical Review and Editing

The terms "review" and "edit" are often applied loosely and interchangeably, but each has a distinct connotation. By established usage, the review of a manuscript is to critically evaluate its subject matter and basic organization, whereas the editing of a manuscript is a later step and consists of correction of grammar and formatting details. The first responsibility of the reviewer is to evaluate the documentation presented, but the reviewer should feel free to comment upon grammatical points. The extent to which experienced and objective reviewers should concern themselves with grammar depends on several factors including (1) the responsibility to help the author improve in writing ability skills, (2) the extent to which grammatical vagueness clouds the data and conclusions, and (3) the ease with which these notations can be made without distracting the reviewer from his or her major purpose. In other words, a reviewer is not required to thoroughly edit for grammar, but is expected to make the grammatical notations necessary for desirable technical clarity.

Review Techniques

The reviewer should provide a written evaluation with general specific commentary for corrective measures. He or she should first carefully read the entire report to gain a proper perspective. Next, the reviewer should focus on specific areas of concern. Comments should be thorough in extent, clear in explanation and prepared in a positive, appropriate manner. Avoid such comments as "really," "awkward," "not clear," "explain," "expand," "evidence," and so forth, because they may lead the author to frustration and resentment. Moreover, these words do not provide any explanation for corrective measures. Comments and suggestions should be written on a copy of the report. An overall summary and explanation of any major deficiencies should be prepared in narrative form on separate pages, hand written if clearly done. Comments and narrative should be sent to the author through appropriate channels. If possible, the reviewer and the author should then come together to discuss matters and their resolutions. If this is not possible, then the reviewer and author must communicate through correspondence and by phone.

Technical Reviewer/Mineral Examiner Relationship

Technical reviewers should make helpful, constructive, and appropriate comments with a positive attitude. Remember, the reviewer can be in the role of instructor, and it is part of the role to see that an author presents a well written narrative. To this end, the reviewer and the author will benefit by informal discussions before, during, and after the review process.

After Technical Review

After the BLM technical review, the mineral report is submitted for management acknowledgment and comment. Usually the manager involved is a line manager. Specific information regarding acknowledgment is at the BLM Manual 3060.08E,
April 7, 1994 and is given below, in part:

> Management Acknowledgment of Mineral Reports. A mineral report is produced by the collection and analysis of geologic and related data. The conclusion drawn from this analysis is the professional opinion of a mineral specialist who gathered the information and prepared the report. Once reviewed and approved by a mineral specialist or mineral review examiner, the report's technical conclusions are not subject to revision by management. However, the recommendations of a mineral report are advisory in nature. The line manager will indicate that they have read and understand the conclusions and recommendations of the mineral report by signing the management acknowledgment block on the mineral report cover sheet.

USFS Forest Supervisors do management acknowledgment on mineral reports generated by the USFS. Acknowledgment is made prior to submission to the BLM for final technical review. Since 1993 all reports on mineral patent applications have been sent to the BLM Headquarters Office in Washington, D.C., for a final technical review after management acknowledgment.

Since 1993 there have been new and evolving Washington Office (WO) BLM procedures for review of all mineral patent reports that recommend any portion of the application for patent. If contest is recommended by any State Office (BLM) then that report is not sent to the WO. Some of the details of the new technical review system and its implementations are discussed in Attachment A-5 on Pages 397-405.

ACTIONS BASED ON MINERAL REPORT

Introduction

In the mineral report, the mineral examiner will recommend the disposition of each claim in the mineral patent application, or for a validity investigation where mineral patent is not involved. The examiner will recommend patent issuance or validity for (a) all the claims, (b) only certain claims, (c) portions of claims, or (d) none of the claims. For those claims, or portions thereof, not recommended for patent, or found to be invalid, contest action may be initiated. Unless the land is needed for administrative purposes, the claimant is usually given the opportunity to withdraw claims not recommended for patent from the application. If the claimant is not given the option, or fails to withdraw when the opportunity is presented, contest action can be initiated.

Mineral Patent Recommended

When a mineral patent issues, it ordinarily conveys fee title to both the surface and subsurface land. Various laws provide for exceptions to this policy. One exception would occur when the surface has been patented under an Act which allows for split estate, such as the Stockraising Homestead Act of December 29, 1916 (43 USC 299). Another exception is a mineral patent issued in National Forest Wilderness when the claim was either located or validated by a discovery occurring after September 3, 1964 (16 USC 1131).

In these instances, title would convey to the mineral deposits, but not the surface. Reservations, such as required by law, are imposed in the patent. For example, all patents issued in California must contain a reservation of ditches and canals (see Document D-1 on Page 212). Under certain conditions, the leasable minerals may be reserved (see Document D-2 on Page 213). Patents for claims situated in the California Desert Conservation Area, whose discovery dates postdate the Federal Land Policy and Management Act of 1976, contain special wording to protect the desert (see Document D-2 on Page 213). Claims situated within a power site reserve or classification contain certain reservations (see Document D-1 on Page 212). All patents issued for placer claims are made subject to certain conditions and stipulations regarding boundaries and known lodes (see Document D-3 on Page 214). Patents are granted subject to prior existing rights-of-way (see Document D-3 on Page 214).

The signing of the patent document by the authorized Secretary of the Interior conveys fee title.

Contest Recommended

When contest is recommended, a complaint (contest of mining claims) is initiated. The complaint will contain "charges" recommended by the mineral examiner. An example of a "charge" frequently used is: "There are not presently disclosed within the boundaries of the mining claims minerals of a variety subject to the mining laws, sufficient in quantity, quality, and value to constitute a discovery." The complaint will also contain a prayer for relief, i.e., that the mineral entry be canceled and that said mining claims be declared null and void. If the claimant files a timely answer to the complaint specifically denying the charges (which can simply be a letter, referencing the complaint and stating, "I deny the charges"), the case will be forwarded to the Office of Hearings and Appeals. The only documents sent by the BLM will be a copy of the complaint, proof of service on the claimant (certified return receipt card), and a copy of the claimant's answer. The case will be heard before an administrative law judge. At the hearing, the surface management agency (either USFS or BLM), represented by an attorney from the agency, will present a prima facie case showing why it believes the charges to be true. The claimant, who may either represent him or herself, or engage an attorney, will present evidence to refute the charges. A hearing is more informal than a court proceeding.

The administrative law judge will consider the evidence presented by both parties and render a decision. The decision may be adverse to either party and is appealable by either party to the IBLA. If either party appeals to IBLA, the case record is forwarded to IBLA by the administrative law judge, where a panel of administrative judges renders a decision based on the case record. Any decision rendered by IBLA is binding on the Department of the Interior. An example of a contest complaint is shown in Document D-4 on Page 215.

Part Patent and Part Contest Recommended

When there are several claims in an application and some are recommended for patent while contest action is recommended for the remainder, the applicant will be given the choice of having patent issue at this time for those claims recommended for patent, or the claimant may elect to await the outcome of the contest proceedings. If the claimant chooses that patent issue for the clear-listed claims, patent will issue immediately for those claims. Then, if contest claims are later ruled to be valid, a supplemental patent will issue for those claims when the adverse proceedings are completed. This applies if an entire claim is recommended for patent. Where part of a placer claim is recommended for patent, and part is recommended for contest action, patent cannot issue for the recommended part of the claim until the contest action is completed.

Prima Facie Case

In regard to Government mineral work, a prima facie case is one where the case is completely adequate to support the Government's contest of the claim and no further proof is needed to nullify the claim (*U.S. v. Bunkowski,* 5 IBLA 102, 119, 79 ID 43: *U.S. v. Pool,* 78 IBLA 215 (1984)).

In *Foster v. Seaton,* 271 F2d 838 (DC Cir., 1959), *cert. denied,* 393 US 1025 (1969), it was indicated that the Government has only the burden of going forward with a *prima facie case* of lack of discovery. It is well established that when the Government contests the validity of a mining claim on the basis of lack of discovery, it bears only the burden of going forward with sufficient evidence to establish a *prima facie* case. Once a *prima facie* case is presented, the claimant must present evidence which preponderates sufficiently to overcome the Government's case on those issues raised. *U.S. v. Springer*, 491 F2d 239, 242 (9th Cir.), *cert. denied,* 419 US 834 (1974); *Foster v. Seaton,* 271 F2d 836 (D.C. Cir., 1959).

ADMINISTRATIVE REVIEW PROCESS (APPEALS)

Introduction

Congress created and delegated the stewardship of the public lands to the Department of the Interior in 1849, thereby giving the Secretary the authority to consider and adjudicate any matter pertaining to public lands. The Department of the Interior has long recognized and protected the citizen's right to due process in public land cases and has consistently provided a right of appeal to the Secretary from decisions of agency officials. For efficiency, the Secretary has delegated this authority to the Office of Hearings and Appeals. However, the Secretary retains reserved authority to take jurisdiction of an unresolved case for purposes of review, adjudication, or direction. The Office of Hearings and Appeals is the authorized representative of the Secretary for the purpose of hearing, considering, and determining, as fully and finally as might the Secretary, appeals concerning public lands managed by agencies of the Department of the Interior. The Office of Hearings and Appeals is neither part of the BLM nor part of the Office of the Solicitor but is, instead, part of the Office of the Secretary and intended to provide objective administrative review.

The Office of Hearings and Appeals is divided into two main components -- the Hearings Division and Boards of Appeal. The Hearings Division is comprised of administrative law judges who conduct fact-finding hearings arising under statutes and regulations of the Department. There are three Boards of Appeal, the largest of which is the Interior Board of Land Appeals (IBLA) comprised of nine administrative judges. The IBLA has subject matter jurisdiction over final decisions of certain agencies within the Department, including the BLM, and of Hearings Division administrative law judges in certain matters. The IBLA principally reviews the BLM decisions. With the following exceptions, all decisions of BLM officers are appealable to IBLA: (1) approval of a BLM decision by the Secretary; (2) approval of a BLM decision by the Assistant Secretary prior to the filing of an appeal; (3) BLM land classification decisions; (4) properly designated Area of Critical Environmental Concern; and (5) resource management plans.

Initiating an Appeal to IBLA

A party must meet two requirements before appealing a BLM decision to IBLA. First, the BLM must have adjudicated the interests of the party. Second, the decision must have adversely affected the party. Interim actions, such as requests for information or warnings that adverse action might be taken in the future, are not appealable. In most cases, the BLM will denote that it has adjudicated a case by including a paragraph advising the recipient that the decision is subject to immediate appeal to IBLA, as well as information on how to perfect the appeal.

The regulations at 43 CFR Part 4 establish a mandatory procedure for initiating an appeal to the IBLA from a decision by the BLM. A party wishing to appeal to the IBLA must file a notice of appeal within 30 days of receipt of BLM's decision. The notice of appeal must be sent to the office of the BLM officer making the decision, **not** to the IBLA. Failure to file a timely notice of appeal deprives the IBLA of jurisdiction over the appeal and renders BLM's decision final. The BLM has no authority to waive the 30-day time period for filing a notice of appeal.

There is a ten-day grace period for filing a notice of appeal. If the notice of appeal was placed in the mail before the end of the 30-day time period, and it arrives at the proper BLM office within ten days of the end of the 30-day period, it is considered timely filed. Otherwise, the appeal is untimely and will be dismissed.

The clock for filing the notice of appeal begins to run the day **after** the "date of service." The "date of service" is the date the decision is delivered to the party's last address of record, regardless of whether it was actually received. The "last address of record" is the address used in the application or other documentation filed with the BLM, unless a written notice of a change of address has been filed. An attorney's address may be the last address of record. If a decision is returned to the BLM as undeliverable, the time starts the day the decision is returned to the BLM office by the U.S. Postal Service.

In addition to the requirement that the notice of appeal be sent to the proper BLM office, an informational copy of the notice of appeal must also be sent to the appropriate office of the Solicitor (BLM's legal representative) as well as to any "adverse party" named in the BLM's decision.

Effect of BLM's Decision Pending Appeal

The BLM decisions that are appealed become effective, i.e., in full force and effect, on the day after the expiration of the time for filing a notice of appeal. There are two exceptions to this general rule. First, if the party appealing the decision includes a petition for stay together with the notice of appeal, then IBLA has 45 days after the filing of the notice of appeal and petition for stay in which to rule on the petition. The IBLA may grant the petition, in which case the BLM's decision is stayed pending outcome of the IBLA's deliberations on the merits of the appeal, or it may be denied, which means the decision is in full force and effect. Second, IBLA retains the authority to order that the effect of the BLM's decision be suspended pending its consideration of the appeal. Whenever there is a conflict between the above procedure and a special rule applicable to a particular type of proceeding, the special rule will govern.

If you appeal a BLM decision, you must file your appeal in the office initiating the decision. For example, a 43 CFR 3809 decision letter issued by the State Director will include the following appeal language:

"An appeal from this decision may be taken to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E, and the enclosed Form 1842-1. If an appeal is taken, the notice of appeal must be filed in the California State Office of the Bureau of Land Management, 2800 Cottage Way, Room W-1834, Sacramento, CA 95825, within 30 days from the receipt of this decision. The appeal and case history file will be sent to the Board from this office. Within 30 days after filing the notice of appeal, file a complete statement of the reasons why you are appealing. The appellant has the burden of showing that the decision appealed from is in error. This must be filed with the U.S. Department of the Interior, Office of the Secretary, Board of Land Appeals, 4015 Wilson Boulevard, Arlington, VA 22203. If you fully state your reasons for appealing when filing the notice of appeal, no additional statement is necessary. Additionally, within 15 days after each document is filed, the regulations also require the appellant to serve a copy of the notice of appeal, statement of reasons, written arguments or briefs on the Field Solicitor, U.S. Department of the Interior, Pacific Southwest Region, 2800 Cottage Way, Room E-1712, Sacramento, CA 95825. To avoid summary dismissal of the appeal, there must be strict compliance with the regulations.

"This decision will become effective on the day after the expiration of the time during which an appeal may be filed unless a petition for a stay is filed together with a timely notice of appeal. The appellant petitioning for a stay must serve the petition on each adverse party named in the decision and it must be filed with the Board of Land Appeals, 4015 Wilson Boulevard, Arlington, VA 22203, along with a copy of the notice of appeal that was filed in the California State Office of the Bureau of Land Management. A petition for stay may be filed only by a party who is eligible to file an appeal. The appellant requesting the stay bears the burden of proof to demonstrate in the petition sufficient justification for a stay based on: (1) the likelihood of the appellant's success on the merits of the appeal; (2) the likelihood of immediate and irreparable harm if the stay is not granted; (3) the relative harm to the parties if the stay is granted or denied; and (4) whether the public interest favors granting the stay.

"If no appeal is taken, this decision constitutes final administrative action of this Department. No appeal, protests or petition for reconsideration will be entertained from this decision after the appeal period has expired."

Filing a Petition for Stay

The procedures for filing a petition for a stay are stated on the reverse side of the appeals form that accompanies the BLM decisions. A petition for a stay may be filed only by a party who is eligible to file a notice of appeal. The petition must be filed together with the notice of appeal. If a petition for a stay is filed separately from the notice of appeal, it is subject to the same standards for timeliness as a notice of appeal. If a party appealing a decision wishes to file a petition for a stay, a copy must be sent to the BLM officer who made the decision, to each adverse party named in the decision, and to IBLA.

The party requesting the stay bears the burden of proof to demonstrate in the petition sufficient justification for a stay based on: (1) the likelihood of the party's success on the merits of the appeal; (2) the likelihood of immediate and irreparable harm if the stay is not granted; (3) the relative harm to the party if the stay is granted or denied; and (4) whether the public interest favors granting the stay.

Where a notice of appeal is timely filed, but the petition for stay is filed after the expiration of the time period for filing an appeal, the petition is untimely and the BLM's decision becomes effective on the day after the expiration of the appeal period. However, nothing in the regulations precludes the filing of a subsequent petition for stay, and the IBLA, in its discretion, may entertain such a petition.

Filing a Statement of Reasons

If the notice of appeal does not include a statement of reasons for the appeal, the party appealing the decision must file such a statement with the IBLA within 30 days of filing the notice of appeal. The statement of reasons is the document in which the adversely affected party specifies how the BLM erred in making its decision. Failure to file a statement of reasons "subjects the appeal to summary dismissal." However, the IBLA has authority to extend the time for filing a statement of reasons. Moreover, the IBLA has discretion to overlook a late filing of a statement of reasons. A copy of the statement of reasons must be sent to the Solicitor as well as to any "adverse party" named in the BLM's decision.

Departmental and Judicial Review of IBLA Decisions

Both the Secretary and the Director of Office of Hearings and Appeals have authority to review decisions issued by the IBLA. However, a party has no right to such review and it is rarely granted. Thus, decisions of the IBLA should be regarded as final for the Department of the Interior. IBLA decisions are appealable to the Federal District Court where the land or property at issue is situated, or the Federal District Court for the District of Columbia. With few exceptions, a party may seek judicial review of IBLA decisions regarding the BLM cases at any time. The principal standard for reviewing an IBLA decision is whether it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. When a Federal court rules in a particular case on an issue that lies within its jurisdiction, the IBLA in most instances must follow that ruling.

Administrative Hearings

Hearings are trial-like proceedings where parties present both testimony and documentary evidence. Administrative law judges in the Hearings Division of Office of Hearings and Appeals preside over these hearings. Witnesses are placed under oath and examined and cross-examined. The proceedings are "on the record," and a transcript of all testimony is made and all documents are retained as part of an official record. Hearings may arise through contest proceedings or initiated at IBLA's direction.

TYPES AND AVAILABILITY OF RECORDS IN BLM OFFICES

Introduction

The BLM is the official land and mineral ownership recordkeeping agency for the Federal government. In this capacity, the BLM California State Office in Sacramento has records for California available for public inspection.

The California State Office Information Access Center is open to the public Monday through Friday from 8:30 a.m. to 4:30 p.m., except on federally authorized holidays. Public contact representatives are available to assist visitors who wish to view records as well as answer requests by telephone and by mail.

The following sections give a description of maps and documents that were developed from public records and are available for public inspection. Maps and copies of the records can be purchased over the counter or by mail.

Surface Management Maps

BLM has color-coded Surface Management maps available at a scale of 1:100,000. As well as showing private lands, these maps indicate lands that are administered by the following governmental agencies:

Bureau of Land Management
Bureau of Reclamation
U.S. Army Corps of Engineers
National Park Service
State of California
U.S. Forest Service
Fish & Wildlife Service
Military Installations
Bureau of Indian Affairs

All maps depict highways, roads, trails, railroads, major transmission lines and pipelines, and other rights-of-way. They also indicate geographic features -- peaks, mountain ranges, hills, valleys, lakes, rivers, streams, and dry lakes. The newer editions also show topography. Some withdrawals, reserves, and classifications that may restrict or prohibit the location of mining claims on public lands are depicted on these maps.

Remember, the land and mineral status shown on these maps is current only as of the date of the map. An index to these maps is shown at Figure F-11 on Pages 161-162.

Land Status Records

Master Title Plat (MTP)

For every township in California, BLM has prepared a Master Title Plat (MTP). See Figure F-12 on Page 163. The MTP is a pictorial display of title actions that affect Federal ownership. This title information is plotted on a base map showing the most recently approved Federal survey lines for sections, tracts, homestead surveys, mineral surveys, and meanders along the boundaries of certain lakes and rivers. The MTP illustrates title information by the use of various kinds of lines and symbols to identify areas affected by a particular Federal action. Each such action also has an abbreviated notation which identifies the action and/or the legal authority for the action.

Solid, dark lines are drawn around lands that have been patented into private ownership. The patent numbers and any reservations to the United States, including reservations of minerals, are noted to the MTP. The absence of dark, solid patent lines and a patent number would indicate the land is still Federal land - often referred to as public domain land. Withdrawals for National Forests, reclamation projects, Federal dams and reservoirs, protective withdrawals, military reservations, National Parks and Monuments, Wildlife Refuges, power projects, and public water reserves, classifications, rights-of-way, leases, and more, are also shown. Patented lands (privately owned lands) are closed to the location of mining claims. Lands that have been withdrawn (set aside for a specific use) are often closed to the location of mining claims as well. The official land status records provide valuable information in determining if an area is open to the location of mining claims.

Historical Index (HI)

The Historical Index (HI) is a chronological list of actions which affect the use of or title to public lands and resources. See Table T-14 on Page 144. It can be used to check title, but it was not designed for that purpose. The primary value of the HI is its adaptability for abstract work. The HI is especially useful in conjunction with the MTP. Remember that the HI records legal descriptions from title documents and terminated land use authorizations, while the MTP is updated as necessary to show current survey descriptions, locations, and authorizations.

Control Document Index (CDI)

The Control Document Index (CDI) contains copies of documents that historically or presently affect the status of each township. These documents are on microfilm and are filed in township and range order. The CDI consists principally of patents, grants of land to the State of California, and withdrawals.

Washington Office and California Tract Books

The tract books maintained in the California State Office represent historic records maintained between 1853 to approximately 1970. These books were used before the Historical Index and contain the history of transactions involving public domain lands for California prior to 1970. These books are used when doing research on the history of mineral patents and other actions pertaining to a specific piece of land. Where the HI lists actions for an entire township, the tract books list transactions by sections within a township. These records are available on roll microfilm.

Serial Books and Serial Register Pages

The BLM maintains an individual, chronological record of public land authorizations referred to as serial registers. After July 1, 1908, each new transaction was given a serial (or case) number and was handwritten or typed onto a page or pages in a serial register. Serial register pages are maintained in the California State Office in the serial register books. In 1982, entries into the books were discontinued and all transactions are now entered into the automated data base system known as the Legacy Rehost 2000 (LR 2000). Inquiries made to the automated data base produce printed serial register pages and may be obtained from any BLM office. Copies of the manual serial register pages, maintained through 1982, are available through the California State Office.

Survey Plats and Field Notes

All approved Federal survey plats (maps) and field notes have been filmed onto microfiche. The plats include approved mineral surveys of patented and unpatented mining claims. Copies are available for sale from Survey Records office.

Mining Claim Reports

Prior to the installation of LR 2000, four computer reports filmed onto microfiche were available upon request. These microfiche contained information regarding all mining claims which had been recorded with the BLM in accordance with the mining claim recordation requirements of FLPMA, Section 314 (P.L. 94-579). The microfiche were updated quarterly and consisted of the Serial Number, Claim Name, Claimant, and Geographic reports. Since the installation of LR 2000 in March 1999, the microfiche are no longer available and have been replaced by the ad hoc reporting capabilities in LR 2000. The ad hoc capabilities are available through these LR 2000 reports:

1. MC Action Code Report: Lists serial number, claim name, geographic location, claimant, case type, and specified action code information. See Table T-15 on Page 145.

2. MC Geographic Report: Lists serial number, claim name, claimant, case type, status, and location date for all claims within a specified geographic area. See Table T-16 on Page 146.

3. MC Claim Name/Number Index: Lists claim name, serial number, claimant, geographic location, and location date for requested selection criteria. Sample shows all active claims located within Sacramento County. See Table T-17 on Page 147.

4. MC Customer Information Report: Lists customer name, address, and serial numbers. Sample shows all active and closed claims for claimants with the last name Dewitt. See Table T-18 on Page 148.

5. MC Geographic Index Report: Lists geographic location, county, BLM district, serial number, case type, claim name/number, claimant, lead casefile, county recording information, location date, and latest assessment year.

6. MC Serial Number Index Report: Lists serial number, case type, claim name/number, claimant, geographic location, county, BLM district, lead casefile, location date, latest assessment year, county recording information.

Case Files

Location notices recorded with the BLM are stamped with a serial number and placed in a folder. Amendments, maintenance fee payment receipts, proofs of labor, notices of intent to hold, notifications of change of address, quitclaim deeds, and any other correspondence relating to a claim are put in the folder. This entire package is referred to as a "case file" and it is stored in serial number order in the BLM State Office. To inspect a case file or purchase copies of the documents by mail, it is essential to know the serial number of the subject mining claim. The documents contained in these files are public records. Identification, such as a driver's license, is necessary prior to a member of the public inspecting the mining claim case files.

Mineral Patent Records

When an application for a patent is received at the California State Office, a case file is established and the case is assigned a case file number which is different from the mining claim (MC) serial number. All inquiries regarding this application henceforth must refer to this case file number or the actual patent number following approval of an application.

All patent application case files are available for viewing by members of the public. Once the patent application is approved and a patent is issued, the case file is retained at the State Office for three years. At the end of the three-year period, the patent file is transferred to the Federal Records Center. If the file needs to be reviewed, it will be ordered from the Federal Records Center for viewing in the State Office. After 30 years the file is sent to the National Archives for permanent retention.

A copy of the final patent is microfilmed and maintained in the Control Document Index for future reference and viewing by members of the public.

Official Public Notices

Notices pertaining to changes on the public lands are prominently posted in the California State Office Public Information Access Center. Examples of these types of notices are mineral patent applications, opening land orders, land withdrawals, notices of realty action, and proposed and final regulations. See Document D-5 on Page 216.

SELECTED REFERENCES

American Law of Mining (2^{nd} ed., 5 vols), 1985; Rocky Mountain Mineral Law Foundation; Matthew Bender, N.Y. and San Francisco

Black's Law Dictionary, 1979; West Pub. Co., St. Paul, MN.

California Reporter (Cal. Rptr.), contains state appellate court opinions from 1959 to present; updated by advance sheets and published in book form periodically; West Pub. Co., St. Paul, MN.

California Public Resources Code, Division 2: Chap. 4, Manner of Locating Mining Claims, Tunnel Rights, and Mill Sites; Chap. 5, Mining Partnerships; Chap. 6, Placer Mining Water Pollution; Chap. 7, Miscellaneous Provisions.

Code of Federal Regulations (CFR), Title 43 (3 vols.), contains regulations regarding the Public Lands; published annually and updated to October 1; U.S. Government Printing Office.

Corbin R.K., 1988, Title to U.S. Gold Mines: An Introduction for Canadian Junior Mining Companies, *American Institute of Mining Engineers*, 2^{nd} Ann. Intern. Gold Conf., November, pp. 171-188.

Evans, J.R., Waiwood, R.M., and Reid, R.E., October 1986; Procedures for determining discovery on small gold mining claims in California; *California Geology*, Vol. 39, No. 10, pp. 219-228.

Evans, J.R., November 14, 1988, Mineral patent determination for the Cherokee Gold Deposit of Gold Fields Mining Corporation, Mesquite Mine, Imperial County, California, BLM Mineral Report, 90 pp., with numerous attachments.

Evans, J.R., Milne, P., and Leverette M., May 20, 1989; Common variety determination for the Rheoforce Pumicite deposits, Last Chance Canyon area, El Paso Mountains, Kern County, California; BLM Mineral Report, 53 pp., with 22 attachments.

Evans, J.R., Whitcomb, C.W., July 7, 1992, Mineral Patent determination for part of the McLaughlin Gold Deposit and 130 dependent mill sites of Homestake Mining Co. in Napa, Lake, and Yolo Counties, California, BLM Mineral Report, 85 pp., with numerous attachments.

Evans, J.R., January 27, 1997, Mineral Patent determination for the Fuller's Earth deposit, Capricorn PNC #11-15, Washoe County, Nevada, BLM Mineral Report, 74 pp. with numerous attachments.

Evans, J.R., 1998, The Concept of Validity on Mining Claims: Nonrenewable Resources (Plenum Press), Vol. 7, No. 3, pp. 163-185.

Evans, J.R., 1998, Guidelines for Fair Market Value (FMV) Appraisal of Mineral Interest; BLM Technical Bulletin, 99 pp.

Federal Register (F.R.), contains documents relating to the governmental regulatory process; published daily; U.S. Government Printing Office.

Federal Reporter (F., F.d), contains written opinions of Federal intermediate appellate counts; updated by advance sheets and published in book form periodically; West Pub. Co., St. Paul, MN.

Interior Board of Land Appeals (IBLA), contains decisions issued by the Board.

Mining Law from Location to Patent, with cumulative supplements, 1985; Terry S. Maley; *Mineral Land Publications*, Boise, Idaho.

Pacific Reporter (P., P.d), a multi-state reporter of state appellate count opinions from 1853 to present; updated by advance sheets and published in book form periodically; West Pub. Co., St. Paul, MN.

Supreme Court Reporter (S. Ct.), contains all Supreme Court written opinions since 1882; updated by advance sheets and published in book form periodically; West Pub. Co., St. Paul, MN.

United States Code (USC), contains current Federal legislation; published every 6 years, but with annual cumulative supplements; U.S. Government Printing Office.

United States Code Annotated (USCA), contains same data as USC, but has many special features; updated 3 times a year, with an annual cumulative supplement; West Pub. Co., St. Paul, MN.

United States Statutes at Large (Stat.), contains a complete file of Federal legislation passed since 1789; new volume added at end of each session of Congress; U.S. Government Printing Office.

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T-1 INDEX - Surface Management Regulations Regarding Exploration and Mining Operations

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2.	Notice of Intent to Apply for patent	3861.7-1	MF-1	201
3.	Witness statement as to posting notice of intent	3861.7-2	MF-2	202
4.	Certificate of expenditures, improvements, and mineral survey (surveyed claims)	3861.2-2 to 4 3863.1-2	FM-12	199
5.	Evidence of Citizenship or Certificate of Corporate Authority	3862.2-1 & 3862.2-2	MF-4	204
6.	Abstract or Certificate of Title (Form 3860-2) with certified copies of location notices and amendments	3862.1-3	FM-8	193
7.	Pre-Application for Patent (Narrative Statement) Including Atomic Bomb Statement	3862.1-1 3863.1-3 & 1-4 3864.1-1 & 1-3		62
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9.	Statement of all placer ground and no known lodes	3863.1-3 & 3863.1-4	MF-5	205
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2. Publisher's Agreement (BLM will designate paper to obtain agreement with. BLM also sends the publication to the paper at the proper time.)	3862.4-1	MF-7	207
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1. Proof of publication (furnished by the paper to the applicant)	3862.4-5	MF-8	208
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T-3 INDEX - Summary of Subsequent Mineral Patent Document Filings and Post-publication Documents

CHAINS
Feet

AREAS

	Acres
Total area, Golden Annex 8 lode	15.014
Area in conflict with -	
Tract B4, hereinafter described	1.169
Total area, Golden Annex C lode	17.906
Area in conflict with -	
Tract AJ1, hereinafter described	5.657
Total area, Golden Annex 6 lode	20.661
Area in conflict with -	
Tract AJ7, hereinafter described	3.913
Total area, Big Chief 4 lode	17.225
Area in conflict with -	
Tract B6, hereinafter described	0.995
Total area, Golden Annex A lode	15.152
Area in conflict with -	
Tract CB1, hereinafter described	7.045
Total area, Big Chief 3 lode	18.095
Area in conflict with -	
Tract B8, hereinafter described	0.366
Total area, Big Chief 2 lode	18.679
Area in conflict with -	
Tract LS2, hereinafter described	0.573
Total area, Golden Annex D lode	11.019
Area in conflict with -	
Tract CB2, hereinafter described	2.085
Total area, Golden Annex E lode	20.661
Area in conflict with -	
Tract GCC, hereinafter described	5.426
Tract CB4, hereinafter described	0.670
Total area, Big Chief 1 lode	20.661
Area in conflict with -	
Tract LS1, hereinafter described	0.652
Total area, Desert View 2 lode	20.661
Area in conflict with -	
Tract BB1, hereinafter described	0.725
Desert View 1 lode of this survey	0.153
Total area, Calcite 3 lode	20.661
Area in conflict with -	
Tract CB6, hereinafter described	3.291
Golden Annex 5 lode of the survey	4.386
Total area, Cholla lode	18.079
Area in conflict with -	
Desert View 1 lode of this survey	2.681
Total area, Golden Annex 4 lode	20.661
Area in conflict with -	
Tract L3, hereinafter described	0.412
Total area, Golden Annex 5 lode	8.771
Area in conflict with -	
Golden Annex 4 lode of this survey	0.0002
Calcite 3 lode of this survey	4.386
Total area, Desert View 1 lode	8.644
Area in conflict with -	
Cholla lode of this survey	2.681
Desert View 2 lode of this survey	0.153

TRACT B4

That portion of Golden Annex 8 lode to be excluded by request of the claimant.

Beginning at Cor. No. 4 Golden Annex 8 lode --
thence S. 11°03' W., 518.16 ft.;
thence S. 31°35' W., 103.10 ft. to a point on line 2-3 Golden Annex 8 lode;
thence N. 62°35' W., 138.46 ft. to Cor. No. 3 Golden Annex 8 lode; thence N. 27°25' E., 600.00 ft. to place of beginning.

CHAINS
Feet

Beginning at Cor. No. 2 Golden Annex 4 lode —
thence S. 32°11' W., 589.89 ft. to a point on line 2-3 Golden Annex 4 lode;
thence N. 25°27' W., 1.27 ft. to cor. No. 1 Golden Annex 5 lode:
thence N. 25°27' W., 42.28 ft.;
thence N. 31°42' E., 334.49 ft.;
thence N. 41°53' E., 235.46 ft. to place of beginning.

Tract L3 contains 0.410 acres.

LOCATION

This survey is located in unsurveyed secs. 5 and 8, T. 13 S., R. 19 E., San Bernardino Meridian.

The survey of all lodes is identical with the respective amended locations as marked on the ground.

EXPENDITURES

The improvements and the values of the labor and improvements made upon or for the benefit of each of the lode locations embraced in said mining claims by the claimant or its grantors are as follows:

No. 1 The discovery of the Golden Annex 8 lode, a drill hole, SM-469 which bears N. 78°15 W., 700.5 ft. from Cor. No. 1 Golden Annex 8 lode; 4 ins. diam., 435 ft. deep. Value, $3340.80

No. 1 The discovery of the Golden Annex C lode, a drill hole, SM-505 which bears S. 56°26' E., 809.0 ft. from Cor. No. 1 Golden Annex C lode; 4 ins. diam., 217.5 ft. deep. Value, $1670.40

No. 1 The discovery of the Golden Annex 6 lode, a drill hole, SM-370 which bears S. 85°51' E., 869.9 ft. from Cor. No. 1 Golden Annex 6 lode; 4 ins. diam., 463 ft. deep. Value, $3555.84

No. 1 The discovery of the Big Chief 4 lode, a drill hole, SM-141D which bears N. 15°01' W., 536.0 ft. from Cor. No. 1 Big Chief 4 lode; 4 ins. diam., 413 ft. deep. Value, $7546.08

No. 1 The discovery of the Golden Annex A lode, a drill hole. SM-268D which bears S. 29°48' E., 609.1 ft. from Cor. No. 1 Golden Annex A lode; 4 ins. diam., 417 ft. deep. Value, $6924.87

No. 1 The discovery of the Big Chief 3 lode, a drill hole, SM-456D which bears S. 83°59' W., 692.1 ft. from Cor. No. 1 Big Chief 3 lode; 4 ins. diam., 368 ft. deep. Value, $6569.58

No. 1 The discovery of the Big Chief 2 lode, a drill hole, SM-550 which bears N. 42°33' W., 648.1 ft. from Cor. No. 1 Big Chief 2 lode; 4 ins. diam., 197.5 ft. deep. Value, $1516.80

No. 1 The discovery of the Golden Annex D lode, a drill hole, SM-274 which bears N. 79°54' E., 470.0 ft. from Cor. No. 1 Golden Annex D lode; 4 ins. diam., 195 ft. deep. Value, $1497.60

T-4 Field Notes from Mineral Survey No. 6900

T-5 Sample Statistics, Golden Eagle Placer Deposit

SAMPLE STATISTICS

Sample	Sample Description (Mining claim^{1}; (rock unit^{2};method of taking^{3}-purpose^{4})	Date Taken	Measurement Unit	No. of Measurement Units	Dimension of Cut	Volume of Gravels (ft.^{3})	Volume of Boulders (ft.^{3})	Swell factor 10%; (ft.^{3})	Total Volume in place (ft.^{3})	Total Volume (Yds.^{3})	Boulder^{6} Factor (%)	Gold recovered (mgs.^{10})
1	GE No. 1; Qal; DR-DISC.;	5-22-85 5-23-85	time	2.0 hours	N/A	N/A	N/A	N/A	N/A	N/A	N/A	2,083
2	GE No. 1; Qal; OR-MIC.	5-24-85	time	2 hours	N/A	N/A	N/A	N/A	N/A	N/A	N/A	coarse gold obs.
3	GE No. 2; Qt; HC-MIC	5-22-85	weight^{5}	582 lbs.	Irreg.^{9}	5.2	1.0	4.7	5.7	0.21	21	73.8
4	GE No. 3; Qt HC-MIC	5-23-85	weight^{5}	456 lbs.	Irreg.^{9}		0.75	3.7	4.4	0.63	17	34.4
5	GE No. 2; Qt; HC-MIC	5-23-85	weight^{5}	354 lbs.	Irreg.^{9}		2.0	2.9	4.9	0.18	41	27.4
13 A	GE No. 2; Qsw (gravels); BHC-DISC..	8-27-85	5-gal. buckets^{8}	14.8 bu.	5.5'(1)x42"(w) x6"(d)	9.9		8.9	10.9	0.40	18	87
13 A	GE No. 2;Qsw(boulders); BHC-DISC.	8-27-85	weight^{7}	359 lbs.	same as above		2.0					
13 B	GE No. 2; Qt (gravels); BHC-DISC.	8-28-85	5-gal. buckets	34.6 bu.	9'(1)x36"(w) x1'(d)	23.2		20.9	29.8	1.10	30	572
13 B	GE No. 2; Qt (boulders); BHC-OISC.	8-28-85	weight volume displ.	116 lbs. 61.9 gal.	same as above		0.6 8.3					
14	GE No. 3; Qt (Gravels); BHC-DISC.	8-29-85	buckets	15.9 bu.	10'(1)x24"(w) x6.5(d)	10.6		9.6	12.5	0.46	23	301
14	GE No. 3; Qt (boulders); BHC-OISC.	8-29-85	weight	540 lbs.	same as above		2.9					
14 C	GE No. 3; Qt/Jm; BRC-OISC.	8-30-85	area weight	71.5 in. 2.5 lbs.	11"x6.5" x1"(d)	N/A	N/A	N/A				None
15 A	GE No. 2; Qsw; PSC-MIC;	8-30-85	weight	27 lbs.	6'(1)x6"(w) x1"(d)^{9}	Approx. 0.25	N/A	N/A				1-No. 3
15 B	GE No. 2; Qt; PSC-MIC;	8-30-85	weight	67 lbs.	10.5'(1)x6"(w) x2"(d)	approx. 0.61	N/A	N/A	N/A	N/A	N/A	11-No.3

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[1] Mining claims are denoted as GE No. (Golden Eagle Number).
[2] Rock units are described in the geologic map prepared for this report.
[3] BHC (backhoe cut); OR (dredge operation; 3 " intake); BRC (bedrock cut 1" deep); HC (hand cut); and PSC (pick and shovel cut).
[4] DISC. (discovery point; and MIC (mineral in character determination).
[5] Weight determined to be 111.24 pounds per cubic foot.
[6] Boulders - +6 inch fraction not run through recovery circuit. Volume determined by weight water displacement.
[7] 1 cubic foot of boulders determined to weigh 184 lbs. by water displacement and mineral density.
[8] 1-5 gallon bucket represents 0.67 cubic feet of volume. Loose gravels in the 5 gallon bucket represent 0.60 cubic feet in place volume.
[9] Irregular sample cut total depth exposed (generally from 7-9 feet); not to bedrock. For Mineral in character determination.
[10] Milligrams

T-6 Value Determinations Statistics, Golden Eagle Placer Deposit

VALUE DETERMINATION STATISTICS FOR EACH DISCOVERY SAMPLE

Sample Number	Sample Description	Volume of Sample (yds.^{3})	Weight of Conc. (lbs.)	Gold Recovered by gravity: Sluice (mgs.)[5]	Gold Recovered by gravity: Knudsen Bowl (mgs.)	Gold Recovered by Amalgam-Sluice (mgs.)	Gold Recovered by Aamlgam-Knudsen Bowl (mgs.)	Total Gold Recovered (mgs.)	Gold/yd^3 (mgs,)	Value[2] Gold/yd.^{3} (cents)
1	GE No. 1 Discovery; Qal-river gravels	Time: 2 hours; gold recovered:2,083 mgs.; recovery per hour: 1,042 mgs.; Value per dredging hour: $ 10.84; 35 mgs. of total gold recovered was by amalgamation								
13 A	GE No. 2 Discovery; Qsw layer	0.40	0.8	0.0	40	0.0	47	87	218	227
13 B	GE No. 2 Discovery; Qt layer	1.1	4.9	608	10	5	6	629	572	595
14	GE No. 3(S1/2) Disc; Qt layer (total Sample)	0.46	2.1	208	0	0	93	301	654	680
14 C	GE No. 3(S1/2) Disc.[6];		N/A	0.1	N/A	N/A	N/A	5	N/A	N/A
14	Total Sample 14 including bedrock	0.46	2.2	208	0	0	93 (+5)	306	665	692

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[1] Refer to Table 1, Sample Statistics, and mineral report for complete description of samples.
[2] Value per milligram of gold determined to be 1.04¢/mg ($360 x 900 (fineness) x 0.1 devided by 31,104 mg.).
[3] Amalgamation by the procedures in Wells (1971) and Evans (1984).
[4] Sample amalgamated directly; gold recovered and weighed and added to the recovery of sample No. 14.
[5] Milligrams.
[6] Sample added to total No. 14 sample as it represented bedrock portionof sample.

T-7 Description of Gold Recovered, Golden Eagle Placer Deposit

DESCRIPTION AND CHARACTER OF GOLD RECOVERED

Sample Number	Comments	Color and Staining	Surface Texture	Associated Minerals Observed	Shape	Size[1]	Evidence of Salting
1	GE No. 1; Dredge	Bright yellow	Smooth, slight pit.	None	Flattish, elongate w/ rnd. edges. Some w/ qtz.	Most coarse, minor fines	None
13 A	GE No. 2; Discovery Sample	Bright Yellow	Smooth	None	Ovoid, flat, round edges.	All flat except for amalgamator Au which is v/f.	None
13 B	GE No. 2; Sluice; Discovery Sample	Bright Yellow w/ Fe stn. on all part.	Rough and pitted	None	Coarse-elong., flat rnd. edge; med.&fine-elong. to rnd. w/ rnd. edges and flat	15 coarse, med., & fine; amalgam. v/f.	None
13 B	GE No. 2; Knudsen Bowl; Discovery	Bright yellow.	Smooth, some pitted.	None	Flat rnd. edges, elongate.	All flakes med. to fine; amalgam. v/f.	None
14	GE No. 3; Sluice; Discovery	Bright yellow, loc. irridescent w/ Fe. stn.	Crse. pitted; fine smooth.	None	Elong. to ovoid, flat, rnd. edges.	8 pieces coarse, remain. med. to fine, except amal. which is v/f.	None
14	GE No. 3; Knudsen Bowl; Discovery.	Bright Yellow	Smooth	None	Flattish	all v/f as obs. in pan.	None

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[1] Coarse gold=+10 mesh (2.00 mm or 0.079mm); medium gold= -10 to +20 mesh (0.84mm or 0.033 in); fine gold = -20 to +40 mesh (0.420 mm or 0.017 in); and very fine (v/f)= -40 mesh.

Description of concentrates: A study of the mineralogy of the heavy mineral concentrate (sluice and Knudsen Bowl) from sample Nos. GE 13 B and 14 was conducted by P. Milne at the Folsom Lab. Microscopic examination of the sample concentrates showed that they were essentially of the same mineral composition. Therefore, the following desciption pertains to both samples. The concentrates consist primarily of magnetite, ilmenite and apatite with minor amounts of zircon and rutil (?). The magnetite is in fine to medium grained sub-angular fragments, although some larger paeticles are as much as 0.08 inches in diameter, in well formed octahedral crystals. The ilmenite is composed of fine to medium grained, reddish brown to black particles. Larger, well formed hexagonal crystals as much as 0.08 inches in size are also present.

Apatite is the chief mineral which occurs in the felsic fraction of the concentrate. The apatite is primarily green, fragmented and very fine grained. In general it does not show crystal faces. Zircon (?) also occurs in minor amounts and appears as fine grained, greenish brown, prismatic crystals. Sparce medium to fine grained fragments of quartz, biotite, feldspar, and muscovite, as rell as fragments of chert, serpemtine, gabbro and granite, also occur in the concentrate.

QUALITY AND QUANTITY REQUIREMENTS FOR MEASUREMENT AND SAMPLING OF DEPOSIT, PRUDENT PERSON TEST. *From Broadhead, 1984, Bureau of Mines.*

Grade	Accuracy required	Sample size, in grams required for:			
		-70 mesh	-100 mesh	-140 mesh	-200 mesh
0.1 oz/T	67%	18.5	6.6	2.4	.8
	90%	207.0	74.0	26.0	9.3
	95%	820.0	293.0	107.0	37.0
0.05 oz/T	67%	37.0	13.2	4.8	1.7
	90%	409.0	146.0	53.0	18.0
	95%	1638.0	585.0	213.0	73.0
0.01 oz/T	67%	185.0	66.0	24.0	8.3
	90%	2047.0	731.0	267.0	91.0
	95%	8193.0	2926.0	1067.0	366.0
0.005 oz/T	67%	370.0	132.0	48.0	17.0
	90%	4096.0	1463.0	533.0	183.0
	95%	16383.0	5851.0	2134.0	731.0

T-8 Quality and Quantity Requirements, Measurement and Sampling

				Calender Year (CY)	
				Project Life Year	
LINE	**FUNC**	**ITEM**	**UNIT**	**SYMBOL**	**E FAC**
1		Total Product Mined	tons, yd^3	PM	
2	x	Grade	oz/ton, lb/ton	G	
3	x	Recovery Rate	%	RR%	
4	=	Recovered Mineral	tons, oz, lb	RM	
5	x	Selling Price	$/unit	SP	
6	=	**Gross Revenue**	$	GR	
7		Royalty Rate	$/unit	RR$	
8	x	Total Product Mined	tons, yd^3	PM	
9	=	Royalty Payment	$	RP	
10	or	Royalty Rate	% GR $	RR%	
11	x	**Gross Revenue**	$	GR	
12	=	Royalty Payment	$	RP	
13		**Gross Revenue**	$	GR	
14	-	Royalty Payment	$	RP	
15	+	Recaptured Exploration Costs	$	REC	
16	=	**Net Revenue**	$	NR	
17		Operating Costs Per Unit	$/ton/ yd3	OCU	
18	x	Product Mined, Milled, Processed	tons	PMMP	
19	=	Operating Costs	$	OC	
20		**Net Revenue**	$	NR	
21	-	Operating Costs	$	OC	
22	-	Exploration Costs	$	EC	
23	-	Development Costs	$	DC	
24	-	Loan Interest	$	LI	
25	-	Depreciation	$	DP	
26	-	California Prop Tax (0.75% of NR)	$	CPTx	
27	=	**Taxable Income Before Depletion**	$	TIBD	
28	x	50% Limit on Depletion (0.5 x TIBD)	$	50%DPL	
29		Depletion Rate (%)	%	DPLR	
30	x	Depletion ______% of NR)	$	%DPL	
31	-	Depletion (lower of %NR, or 0.50 x TIBD)	$	DPL	
32	=	**Taxable Income after DPL**	$	TIAD	
33	-	Net Operating Loss Carry Fwd.	$	NOLF	
34	=	**Taxable Income**	$	TXI	
35	-	State & Federal Income Taxes	$	SFTX	
36	=	**Net Income**	$	NI	
37	+	Depreciation	$	DP	
38	+	Depletion	$	DPL	
39	+	Net Operating Loss Carry Fwd.	$	NOLF	
40	+	Exploration Costs	$	EC	
41	+	Development Costs	$	DC	
42	+	Interest on Loan	$	LI	
43	=	**Operating Cash Flow**	$	OCF	
44	+	Salvage Value	$	SV	
45	-	Loan Interest	$	LI	
46	-	Nondepreciable Capital Costs	$	NCC	
47	-	Depreciable Capital Costs	$	DCC	
48	-	Mineral Acquisition Costs	$	MAC	
49	-	Royalty Buyouts	$	RB	
50	=	**Cash Flow**	$	CF	
51	x	Discount Rate Factor @____% (End of Year)	Decimal	DRF	
52	=	Discounted Cash Flow	$	DCF	
53		Cumulative DCF (Sum of DCF)	$	CDCF	

T-9 Discounted Cash Flow Model

Percentage Rates

If the Recovery Year is:	*and the Recovery Period is:* 3-year	5-year	7-year	10-year	15-year	20-year
	the Depreciation Rate (%) is:					
1	33.33	20.00	14.29	10.00	5.00	3.750
2	44.45	32.00	24.49	18.00	9.50	7.219
3	14.81	19.20	17.49	14.40	8.55	6.677
4	7.41	11.52	12.49	11.52	7.70	6.177
5		11.52	8.93	9.22	6.93	5.713
6		5.76	8.92	7.37	6.23	5.285
7			8.93	6.55	5.90	4.888
8			4.46	6.55	5.90	4.522
9				6.56	5.91	4.462
10				6.55	5.90	4.461
11				3.28	5.91	4.462
12					5.90	4.461
13					5.91	4.462
14					5.90	4.461
15					5.91	4.462
16					2.95	4.461
17						4.462
18						4.461
19						4.462
20						4.461
21						2.231

Depletion is used for mineral extraction analyses, because minerals for Federal tax purposes are considered "wasting assets." Therefore, a gradual reduction of the original amount of minerals by extraction and sales through time is considered depletion. Theoretically, the depletion allowance will return the value basis of the original mineral deposit.

Depletion is figured by two methods; one is by cost and the other is by percentage. Tax payers should use both methods and then select the method that shows the most deduction. For BLM analyses, use percentage depletion, which is figured as a specified percentage (by mineral commodity group) of gross income, after royalty payments, for the sales of minerals during the tax year. However, the deduction for depletion cannot exceed 50% of the taxable income after all deductions, except depletion and the loss carried forward deduction (100% for oil and gas). If the 50% value is exceeded, use the 50% value.

1. Sulfur and uranium, and, if from deposits in the U.S., anorthosite, clay, laterite, and nephelite syenite (to the extent that alumina and aluminum compounds are extracted from it), asbestos, bauxite, celestite, chromite, corundum, fluorspar, graphite, ilmenite, kyanite, mica, olivine, quartz crystals (radio grade), rutile, block steatite, talc, zircon, and ores of the following metals: antimony, beryllium, bismuth, cadmium, cobalt, columbium, lead, lithium, manganese, mercury, molybdenum, nickel, platinum and platinum group metals, tantalum, thorium, tin, titanium, tungsten, vanadium and zinc..................**22%**

2. Domestic gold, silver, oil shale (except shale to which (5) applies), copper and iron ore....................**15%**

3. a. Ball clay, bentonite, china clay, sagger clay, metal mines (if not allowed in 22% group above), rock asphalt, vermiculite; and

b. All other minerals [including, but not limited to, aplite, barite, borax, calcium carbonate, clay (refractory and fire), diatomaceous earth, dolomite, feldspar, fullers earth, garnet, gilsonite, granite, limestone, magnesite, magnesium carbonates, marble, mollusk shells (including clam and oyster shells), phosphate rock, potash, quartzite, slate, soapstone, stone (used or sold for use by the mine owner or operator as dimension stone or ornamental stone), thenardite, tripoli, trona and (if not allowed in the 22% group above bauxite, flake graphite, fluorspar, lepidolite, mica, spodumene, and talc [including pyrophyllite] except as specified in (A) and (B) below...**14%**

(A) When minerals in group 3. b. are used or sold for use by the mine owner or operator as rip rap, ballast, road material, rubble, concrete aggregates, or for similar purposes the percentage is 5% (unless sold on bid in direct competition with a bona fide bid to sell a mineral listed in 3. a.

(B) Group 3. b. does not include soil, sod, dirt, turf, water or mosses; or minerals from sea water, the air or similar inexhaustible sources, or oil and gas wells.

4. Asbestos (if from deposits outside U.S.), brucite, coal, lignite, perlite, sodium chloride, and wollastonite............**10%**

5. Clay and shale used or sold for use in the manufacture of sewer pipe or brick, clay, shale and slate used or sold for use as sintered or burned lightweight aggregates..........**7%**

6. Gravel, peat, peat moss, pumice, sand, scoria, shale (except shale to which 15% or 7% rate applies), and stone, except stone described in the 14% group; and, if from brine wells - bromine, calcium chloride, and magnesium chloride................**5%** IRC 613(b); Reg. 1.613-2.

NOTE: The percentage depletion deduction for royalty owners has two limitations — (1) Depletion cannot exceed 100% of the taxable income from the property figured without the depletion allowance (IRC Sec. 613(a)), and (2) it cannot exceed 65% of taxable income from all sources. However, a disallowed deduction may be carried over (IRC Sec. 613A(d)).

T-11 Allowable Percentages for Percentage Depletion

Summary, Conclusions, and Recommendations

Introduction

General; Purpose and Scope of Report; Dates and Scope of Field and Laboratory Examinations and Conferences

Physical Features and Surface Improvements

Location, Accessibility, and Physiography; Climate and Vegetation; Water and Water Facilities; Man-Made Improvements, Power and Communication; Surface Improvements and Certificate of Expenditures

Environmental Features

Land Involved and Status and Record Data

General; Mining Claim Data; Mill Site Data; Mineral Survey Data; Legal Proofs and Descriptions, Posting and Dates of Action; Relinquishments; Prior Leases, Permits, Contracts, Reservations, or Other Encumbrances, Leasable Mineral Considerations

Regional Geology and Mining History

Regional Geology and Mining History

Site Geology and Mine Workings

Site Geology; Mineralization; Exploration Activity; Development Activity; Sampling and Sample Preparation Activities; Analytical Methods and Data; Chemical and Physical Data-Nonmetallic Minerals; Required Specifications for Sale Products; Grade and Tonnage of Reserves; Mine Workings, Final Pit of Workings Design, and Waste to Mineral-Bearing; and Rock Ratio

Mining, Milling, and Related Operations

Mining; Milling; Processing; Production; and Reclamation

Validity of Mill Sites

Type of Mill Site (Dependent or Independent); Legal Proofs; Geology and Mineral in Character Nature; Milling, Processing Other Uses, and the 21/2-Acre Rule

Evaluation of Common Variety Nature of Commodity

General; Other Deposits and Utilization Generally; Specific Utilization; Marketing; Comparison and Analysis with Criteria in McCarty vs. Secretary of the Interior; 408 F2d 907, (9th Cir. 1969); Specific Analysis

Economic Evaluation

General; Time Period(s) of Economic Evaluation; Commodity(s) Use; Selling Price(s); Marketing (Supply/Demand) and/or Market Entry; Verification and/or Development of Technical and Economic Data; Reclamation and Environmental Mitigation Costs; Deposit Modeling and Mineral Patent Relationships; Economic Evaluation, and 10-Acre Rule Findings for Placer Mining Claims

References

(Use U.S. Geological Survey Format)

Note: Include appropriate maps, cross-sections, sketches, tables, figures, milling and processing flow diagrams, photographs, and attachments (legal documents, forms, notices, and so forth).

T-12 Outline of Possible Topics in a Validity Mineral Report

ACEC	Area of Critical Concern	Mgmt	Management	Rest	Restoration, Restored
Acq	Acquired	MTP	Master Title Plat	Rstd	Restricted
A	Acre, Acres	Mer	Meridian	Rev	Revocation, Revoked
AdmS	Administrative Site	M&B	Metes & Bounds	R/W	Right-of-Way
Allot	Allotment	Mil Res	Military Reservation	SB Mer	San Bernardino Meridian
Amdt	Amendment, Amended	Min	Mineral	Sec	Section
Apln	Application	MC	Mineral Certificate	S&O	Swamp and Overflow
Appvd	Approved	ME	Mineral Entry	SO	Secretary's Order
Asgn	Assignment	ML	Mineral Location	Segr	Segregate
Bdy;Bdrs	Boundary, Boundaries	MS	Mineral Survey	Sel	Selection, Selected
BIA	Bureau of Indian Affairs	MCOA	Mining Claim Occupancy Act	Sim	Simultaneous
BLM	Bureau of Land Management	Misc	Miscellaneous	S T	Small Tract
O	Bureau of Land Management Order	Missing Doc	Missing Document	Sod	Sodium
BR	Bureau of Reclamation	Mod	Modification	S	South
BSF&W	Bureau of Sport Fisheries and Wildlife	MD Mer	Mount Diablo Meridian	SE	South East
Cad	Cadastral	Mult Use	Multiple Use	SW	SouthWest
Calif	California	NF	National Forest	SX	State Exchange
Canc	Cancellation, Cancelled	N Mon	National Monument	SG	State Grant
CE	Cash Entry	NP	National Park	SS	State Selection
Cl	Classifications	NWR	National Wildlife Refuge	SDWdl	Stock Driveway Withdrawal
Comm S	Communication Site	N	North	SRHE	Stockraising Homestead Entry
CDI	Control Document Index	NE	Northeast	Suppl	Supplemental
C of E	Corps of Engineers	NW	Northwest	Sur	Surveyed or Survey
Cur	Curative	OG	Oil and Gas	Sus	Suspended
Dept	Department	Oper	Operation	Temp	Temporary
DLE	Desert Land Entry	O	Order	Term	Terminate, Termination
Des	Designated or Designation	Pat	Patent	Tp	Township
Det	Determination	Per	Permit	Tns	Townsite
D/C	Ditches/Canals	Pet Res	Petroleum Reserve	Tr	Tract
Esmt	Easement	Pho	Phosphate	Trf Juris	Transfer of Jurisdiction
E	East	Pot	Potash	Trans	Transmission
Eff	Effective	Pwr Proj	Power Project	UNDGD	Underground
X	Exchange	Pwr S	Power Site	Undet	Undetermined
EO	Executive Order	PX	Private Exchange	Unsur	Unsurveyed
FMU	Farm Unit	Proc	Proclamation	US	United States
FAA	Federal Aviation Administration	Proj	Project	USAF	United States Air Force
FFMC	Federal Farm Mortgage Corporation	Prop	Proposed	USFS	United States Forest Service
FPA	Federal Power Act	PLC	Private Land Claim	USGS	United States Geological Survey
FR	Federal Register	PD	Public Domain	WD	Warranty Deed
FPC O	Federal Power Commission Order	PLO	Public Land Order	WP	Water Power
FX	Forest Exchange	PL	Public Law	W	West
FLS	Forest Lieu Selection	PLS	Public Land Sale	Wdl	Withdrawal
Frac	Fractional	PS	Public Sale	Wdn	Withdrawn
GLOO	General Land Office Order	PW Res	Public Water Reserve	WSA	Wilderness Study Area
Geo	Geothermal	QCD	Quitclaim Deed		
Hum Mer	Humboldt Meridian	RR	Railroad		
1/2	Half	RRG	Railroad Grant		
Hwy	Highway	RRIS	Railroad Indemnity Selection		
HE	Homestead Entry	RRLS	Railroad Lieu Selection		
IL	Indemnity List	Ry	Railway		
IA	Indian Allotment	R	Range		
Ind Res	Indian Reservation	Rcpl	Reciprocal		
Ind Tr.	Indian Trust	Rd	Road		
Int	Interior	RHE	Reclamation Homestead Entry		
Intpr	Interpretation	Recl Wdl	Reclamation Withdrawal		
KGRA	Known Geothermal Resource Area	Recon	Reconveyed		
KGS	Known Geologic Structure	Rec Lse	Recreation Lease		
Lse	Lease	R & PP	Recreation & Public Purposes		
Lsbl	Leasable	Rmks	Remarks		
Lic	License	Res	Reserve, Reservation		
LS	Lieu Selection	Resvr	Reservoir		

-13 Abbreviations of Records and Legend of Symbols

TOWNSHIP 00 NORTH RANGE 00 WEST OF THE MOUNT DIABLO MERIDIAN, CALIFORNIA

SECTION	SUBDIVISION																		ACRES	KIND OF ENTRY -OR- PURPOSE OF ORDER	SERIAL FILE -OR- ORDER NUMBER	DATE OF ACTION	DATE POSTED	—REMARKS— E. G. DATE CLOSED, TERMINATED, REJECTED OR RESCINDED
	NE ¼				NW ¼				SW ¼				SE ¼				LOTS	OTHER DESCRIPTION						
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	FOR ORDERS EFFECTING DISPOSAL OR USE OF UNIDENTIFIED LANDS WITHDRAWN FOR CLASSIFICATION, MINERALS, WATER, AND/OR OTHER PUBLIC PURPOSES, AND INDIAN TREATIES, REFER TO INDEX OF MISCELLANEOUS DOCUMENTS							
16																		All						
36																		All		SG	Act of Cong	3/3/1853		Title to State to vest on approval of Survey, Subj to prior rights
34					X	X	X	X											160.00	Scrip Pat	708	2/20/1872		
																	37	2N 1W	8858.83)	PLC Pat		10/8/1872		Los Medanos Grant 111
20			X					X	X					X					160.00	HE Pat	678	8/24/1888		
31			X	X									X	X				36N 2S	160.00	S&O Pat	5	11/30/1889		
20																								
29																	39	MS 251X	19.11	ME Pat	16269	5/6/1890		MC 217
9																	3, 4		71.17	IA Tr Pat	92	8/7/1893		See Pat 790728 11/18/1921
16																		Part; 28S 19E	1.63	IL Reso	9	2/19/1898		
11												S			X		1							
12												X			X		3, 4							
13		X	X										X	X		X		36N 3E. 36N 5S	467.07	FLS Pat	5052	11/16/1901		
20							S			X									80.00	CS Pat	3634	6/8/1902		See Cur Pat 7/25/1904
28								X		X									80.00	Cur CE Pat	3634	7/25/1904		
27	X	X			X													Tr 52	120.00	HE Pat	1678	8/26/1904		
																		MGD, 36N 2S		Proc Wdl Shasta Forest Res		9/24/1906		Chg to NF Act 3/4/1907, Name Chg EO 906 7/2/1908
																		MGB, 36N 1S		EO Name Chg Shasta NF Proc				
																				9/24/1906 to Lassen NF	906	7/2/1908		Rev Proc 1115 12/30/1910
																		MGX, 25N 2S		Proc Rev Lassen NF EO 906				
																				7/2/1908	1115	12/30/1910		
17																								
20																		Subdiv Und		R/W Tel Line	S 3299	5/14/1913		Act of Cong 2/15/1901; Proof of Construction 6/17/1918
30																	HES 234		38 78	HE Pat	724656	12/18/1919		S 08271
9																	3, 4		71.17	Ind Fee Pat (IA 92)	790728	11/18/1921		
20											X							34N 1W	40.00	FX Pat	844331	1/21/1922		S 013612
21		X																4S 2E Hum Mer	40.00	IL	126	6/8/1923		
19		X	X	X	X			X	X			S	S	X	X	X	1 thru 4							
30																	1		640 09	SRHE Pat	933452	3/7/1924		S 012729. Partially Recon S 037501 12/12/1946
29						S	X			X	X							35N 4E		SX Wdl Pwr S Cl 72		6/3/1924		
16																		All						
36																		All		SG	Act of Cong	1/25/1927		Extends Act 3/3/1853 to Min lands, Subj to prior rights
19		X	X	X	X			X	X			X	X	X	X	X	1 thru 4			FX Reed to US	S 037581	12/12/1946		
35																		W½SE¼NE¼NW¼		BLM O Cl ST 433 Lse & Sale		12/29/1954		
35																		W½SE¼NE¼NW¼	5.00	ST Lse	S 046943	11/8/1954		Term 12/10/1957
19		X			X												1, 2	See Rmks						All land lying within 200' of center line of Hwy 299. Other Tp 44N 2W. Wd PLO 3142
																				Prop Wdl USFS Roadside Zone	S 050088	4/15/1955		7/30/1963
					ENTIRE TOWNSHIP													30N 3E		Det PL 167	S 072077	9/19/1962		Det completed 6/20/1963. All NF surface Mgmt by USFS
19		X			X												1, 2	See Rmks		PLO Wdl USFS Roadside Zone	3142	7/30/1963		All land lying within 200' of center line of Hwy 299; Other Tp 39N 1E. S 050088
37	X	X	X	X															160.00	OG Lse	S 560	8/1/1967		
35																								
36																		See Rmks						All unappropriated public land, Cinder Cone. Segr from appropriation only under Agrl
																				Prop BLM O Cl Mult Use	S 2579	10/18/1967		Land Laws & sale under AS 2455; Other Tp 30N 7W. Cl BLM O 1/5/1968
35																		S½S½SW¼NE¼SE¼	2.50	MCOA Pat	04680244	3/6/1968		S 076227
5																	Part 20			MCOA Lse	S 535	7/26/1968		Rel 8/28/1968

MD Mer
T 00 N
R 00 W

T-14 Sample Historical Index

Selection Criteria for Serial Number Index Report

Admin State:

Geo State:

Admst Dist Ra CD:

County: CA067

Disposition: ACTIVE

System ID:

SERIAL NUMBER INDEX
ACTIVE CLAIMS

Adm State: CA
County: SACRAMENTO

Serial No.	Case Type	Claim Name/Number	Claimant(s)	Legal Desc MTRS	Subdv	Geo Ctv	BLM Dist	Lead File	Loc Date	Latest Assmt-Yr	County Book;Page	Case Closed
CAMC230721	LODE CLAIM	BROMLEY	PAUL GREGORY	21 0030N 0010E 036	NW	067	05	230720	09/19/89	1999	0;8935;1775	
CAMC269617	PLACER CLAIM	OZDEMIR #1	OZDEMIR ALLEN	21 0030N 0030E 005	NW	067	01	CAMC269617	07/17/96	1997	0;1996025821	
			OZDEMIR PHILLIP	21 0030N 0030E 005	NW	067	01	CAMC269617	07/17/96	1997	0;1996025821	
CAMC269618	PLACER CLAIM	OZDEMIR #2	OZDEMIR ALLEN	21 0030N 0030E 005	NW	067	01	CAMC269617	07/17/96	1997	0;1996025821	
			OZDEMIR PHILLIP	21 0030N 0030E 005	NW	067	01	CAMC269617	07/17/96	1997	0;1996025821	
CAMC269619	PLACER CLAIM	OZDEMIR #3	OZDEMIR ALLEN	21 0030N 0030E 005	NW	067	01	CAMC269617	07/17/96	1997	0;1996025821	
			OZDEMIR PHILLIP	21 0030N 0030E 005	NW	067	01	CAMC269617	07/17/96	1997	0;1996025821	
CAMC269620	PLACER CLAIM	OZDEMIR #4	OZDEMIR ALLEN	21 0030N 0030E 005	NW	067	01	CAMC269617	07/17/96	1997	0;1996025821	
			OZDEMIR PHILLIP	21 0030N 0030E 005	NW	067	01	CAMC269617	07/17/96	1997	0;1996025821	
CAMC36065	PLACER CLAIM	LUCKY DOG	INGLE LLOYD	21 0100N 0080E 029	SW	067	01	36065	05/15/67	1998	0;92;604	

* DISCLOSURE * ALL INFORMATION RECEIVED IN THIS OFFICE MAY NOT YET BE LISTED ON THIS REPORT. NAMES AND ADDRESSES ARE ENTERED AS THEY APPEAR ON THE LOCATION NOTICE OR ARE ABBREVIATED TO FIT LIMITED SPACE; THEREFORE THEY MAY NOT APPEAR IN THE EXPECTED SEQUENCE. A BLANK LATEST ASSESSMENT YEAR IN THIS REPORT DOES NOT CONSTITUTE AN ABANDONED CLAIM. '*' AFTER S/N INDICATES LAND STATUS CHECKED.

**NO WARRANTY IS MADE BY BLM
FOR USE OF THE DATA FOR
PURPOSES NOT INTENDED BY BLM**

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Selection Criteria for Mining Claim Name/Number Index

Admin State: CA

Geo State:

County: CA067

Admst Dist RA:

Disposition: ACTIVE

System ID: MC

CLAIM NAME/NUMBER INDEX

ACTIVE CLAIMS

County: SACRAMENTO

Claim Name/Number	Serial No.	Claimant(s)	- - - MER	LEGAL TWN	DESC RANGE	- - - SEC	- - - Subdv	Location Date	Case Closed
BROMLEY	CAMC230721	PAUL GREGORY	21	0030N	0010E	036	NW	09/19/1989	
LUCKY DOG	CAMC36065	INGLE LLOYD	21	0100N	0080E	029	SW	05/15/1967	
OZDEMIR #1	CAMC269617	OZDEMIR ALLEN	21	0030N	0030E	005	NW	07/17/1996	
		OZDEMIR PHILLIP	21	0030N	0030E	005	NW	07/17/1996	
OZDEMIR #2	CAMC269618	OZDEMIR ALLEN	21	0030N	0030E	005	NW	07/17/1996	
		OZDEMIR PHILLIP	21	0030N	0030E	005	NW	07/17/1996	
OZDEMIR #3	CAMC269619	OZDEMIR ALLEN	21	0030N	0030E	005	NW	07/17/1996	
		OZDEMIR PHILLIP	21	0030N	0030E	005	NW	07/17/1996	
OZDEMIR #4	CAMC269620	OZDEMIR ALLEN	21	0030N	0030E	005	NW	07/17/1996	
		OZDEMIR PHILLIP	21	0030N	0030E	005	NW	07/17/1996	

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NO WARRANTY IS MADE BY BLM

Selection Criteria for Mining Claim Customer Information Report

Admin State: CA

Geost County Cd:

AdmSt Dist Ra Cd:

Case Disp Txt: ACTIVE,CLOSED

Customer: DEWITT

System ID:

STATE: CA **ACTIVE,CLOSED CLAIMS**

Cust Name: DEWITT ALEXANDER B

Address: 2098 ASILOMAR DR
City: OAKLAND
State: CA
Zip: 94611
Customer ID: 972640

Serial Nr Full
CAMC186032
CAMC204919
CAMC204920

Cust Name: DEWITT BRAD

Address: 2211 LAUREL ST
City: CHICO
State: CA
Zip: 95928
Customer ID: 972645

Serial Nr Full
CAMC259715
CAMC275637

NO WARRANTY IS MADE BY BLM
FOR USE OF THE DATA FOR
PURPOSES NOT INTENDED BY BLM

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UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Selection Criteria for Mining Claim Geographic Index Report

Admin State: CA

Geo State:

County: CA067

Admst Dist Ra:

Disposition: ACTIVE

System ID:

MINING CLAIM GEOGRAPHIC INDEX REPORT

ACTIVE CLAIMS

County: SACRAMENTO

---	LEGAL	DESC	---	SUB	Geo	BLM	Ser No	Case			Lead	County	Loc	Latest	Case
MER	TWN	RANG	SEC	DV	Cty	Dist		Type	Claim Name/Number	Claimant(s)	File	Book;Page	Date	Assmt-Yr	Closed
21	0030N	0010E	036	NW	067	05	CAMC230721	LODE CLAIM	BROMLEY	PAUL GREGORY	230720	0;8935;1775	09/19/198	1999	
		0030E	005	NW	067	01	CAMC26961	PLACER CLAIM	OZDEMIR #1	OZDEMIR ALLEN	CAMC2	0;19960258210	07/17/199	1997	
				NW	067	01	CAMC26961	PLACER CLAIM	OZDEMIR #1	OZDEMIR PHILLIP	CAMC2	0;19960258210	07/17/199	1997	
				NW	067	01	CAMC26961	PLACER CLAIM	OZDEMIR #2	OZDEMIR ALLEN	CAMC2	0;1996025821	07/17/199	1997	
				NW	067	01	CAMC26961	PLACER CLAIM	OZDEMIR #2	OZDEMIR PHILLIP	CAMC2	0;1996025821	07/17/199	1997	
				NW	067	01	CAMC26961	PLACER CLAIM	OZDEMIR #3	OZDEMIR ALLEN	CAMC2	0;19960258212	07/17/199	1997	
				NW	067	01	CAMC26961	PLACER CLAIM	OZDEMIR #3	OZDEMIR PHILLIP	CAMC2	0;19960258212	07/17/199	1997	
				NW	067	01	CAMC26962	PLACER CLAIM	OZDEMIR #4	OZDEMIR ALLEN	CAMC2	0;19960258213	07/17/199	1997	
				NW	067	01	CAMC26962	PLACER CLAIM	OZDEMIR #4	OZDEMIR PHILLIP	CAMC2	0;19960258213	07/17/199	1997	
	0100N	0080E	029	SW	067	01	CAMC36065	PLACER CLAIM	LUCKY DOG	INGLE LLOYD	36065	0;92;604	05/15/196	1998	

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NO WARRANTY IS MADE BY BLM
FOR USE OF THE DATA FOR
PURPOSES NOT INTENDED BY BLM

LOCATION AND PATENTING OF MINING CLAIMS
AND MILL SITES IN CALIFORNIA

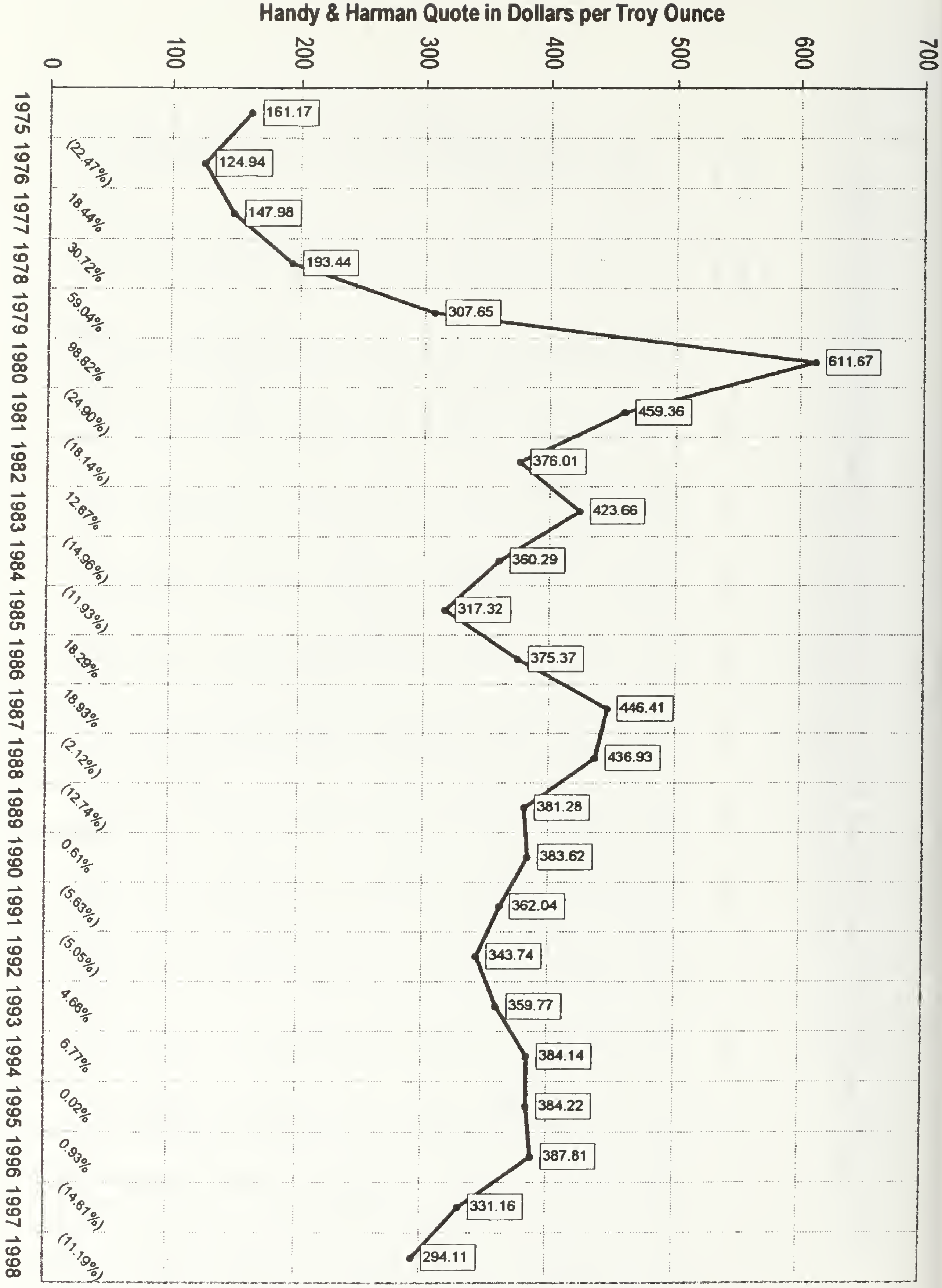
FIGURES

Average Monthly & Yearly Gold Prices with Percent Change from Prior Year

(Handy & Harman Quote in dollars per troy ounce)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Yearly Average	Yearly Change
1975	176.52	179.75	178.28	169.85	167.41	164.35	165.34	163.18	143.76	143.00	143.01	139.50	161.16	
1976	131.19	131.21	132.74	128.02	127.06	125.75	117.62	109.82	114.35	116.48	131.07	133.96	124.94	(22.47%)
1977	132.52	136.27	148.29	149.25	146.80	141.10	143.63	145.29	149.79	159.19	162.69	160.90	147.98	18.44%
1978	173.37	178.10	183.78	175.54	176.27	183.93	189.08	206.24	212.31	227.79	206.54	208.28	193.44	30.72%
1979	227.38	246.15	242.21	238.85	257.44	279.62	295.33	301.99	356.97	392.73	392.16	461.01	307.65	59.04%
1980	675.38	655.51	553.63	516.77	513.91	600.72	643.27	627.51	675.74	660.34	622.48	594.81	611.67	98.82%
1981	557.34	500.26	498.76	494.90	479.79	460.76	408.84	410.96	444.10	434.19	413.67	408.74	459.36	(24.90%)
1982	384.12	374.07	330.25	350.49	334.40	314.98	340.10	365.95	435.56	421.77	414.99	445.43	376.01	(18.14%)
1983	479.89	490.41	419.70	432.19	435.56	412.84	423.05	416.25	411.45	393.21	382.25	387.14	423.66	12.67%
1984	370.89	385.95	394.26	381.66	377.26	377.67	346.44	347.69	340.91	340.11	340.86	319.42	360.29	(14.96%)
1985	302.79	298.82	303.94	324.90	316.37	316.49	317.81	330.23	322.62	326.02	325.47	322.42	317.32	(11.93%)
1986	345.49	339.33	345.42	340.55	432.46	342.79	348.85	376.85	419.01	423.62	398.81	391.23	375.37	18.29%
1987	408.26	401.32	408.91	438.37	460.12	449.59	450.81	460.88	460.20	465.36	466.47	486.31	446.41	18.93%
1988	476.58	441.90	443.61	451.88	450.84	451.33	437.63	431.31	412.79	406.78	420.07	418.49	436.93	(2.12%)
1989	404.01	387.78	390.14	384.40	371.32	367.60	374.98	364.93	361.89	366.84	392.32	409.15	381.28	(12.74%)
1990	410.11	416.83	393.06	374.27	369.19	352.33	362.53	395.03	389.46	380.74	381.72	378.16	383.62	0.61%
1991	383.64	363.83	363.34	358.39	356.82	366.72	367.51	356.23	348.78	358.68	359.53	361.02	362.04	(5.63%)
1992	354.45	353.89	344.34	338.50	337.24	340.81	353.05	342.96	345.55	344.38	335.08	334.66	343.74	(5.05%)
1993	329.01	329.35	330.07	341.91	366.72	371.89	392.41	378.46	354.85	365.45	373.49	383.69	359.77	4.66%
1994	387.02	382.01	384.13	378.20	381.21	385.64	385.44	380.43	391.80	389.77	384.37	379.61	384.14	6.77%
1995	378.55	376.51	382.12	397.11	385.46	387.56	386.23	383.65	382.22	383.14	385.53	387.42	384.22	0.02%
1996	399.59	404.73	396.21	392.96	391.98	385.58	383.69	387.43	382.97	381.07	378.46	369.02	387.81	0.93%
1997	355.10	346.71	351.67	344.47	343.75	340.75	324.08	324.03	322.74	324.87	307.10	288.65	331.16	(14.61%)
1998	289.18	297.49	295.90	308.40	299.39	292.31	292.79	283.76	289.01	295.92	293.89	291.29	294.11	(11.19%)
1999	287.05													

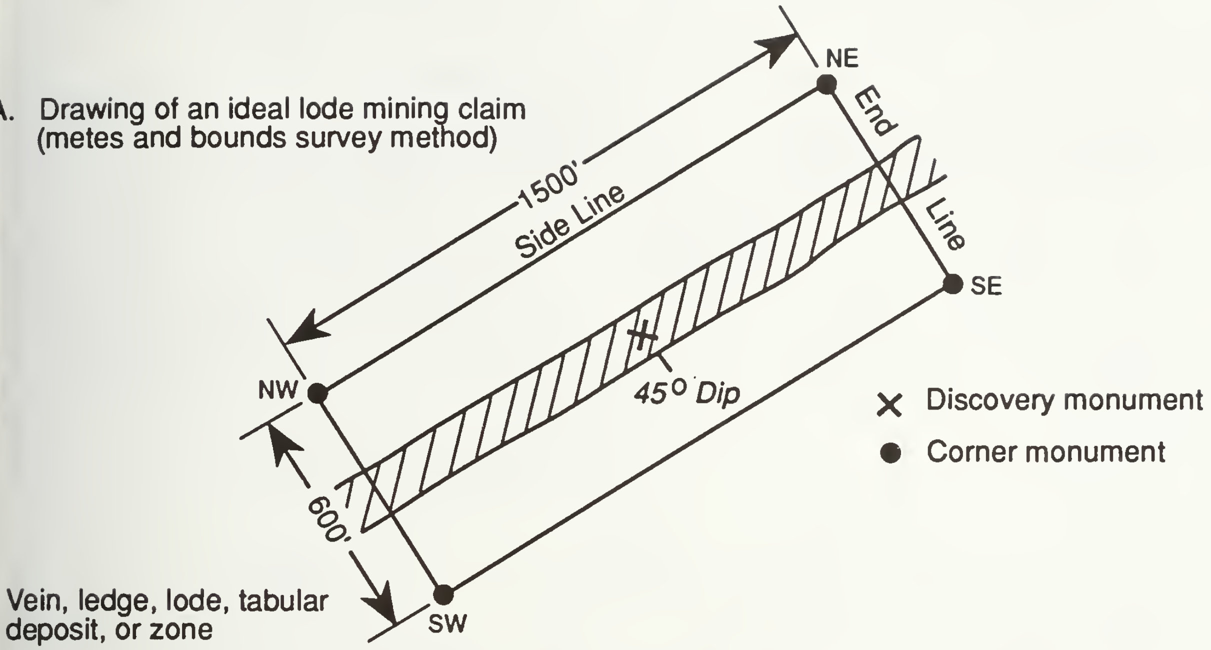
F-1 (a) Average Monthly and Yearly Gold Prices (table)



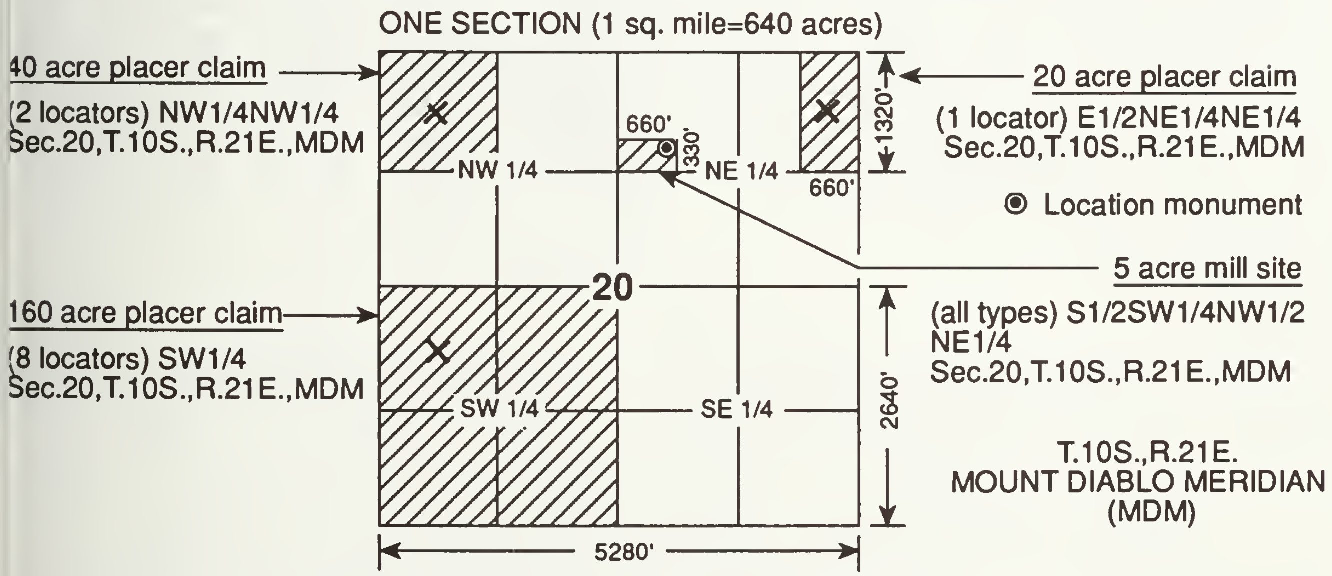
Compiled by J. R. Evans 1998

F-1 (b) Average Monthly and Yearly Gold Prices with Percent Change from Previous Year (graph)

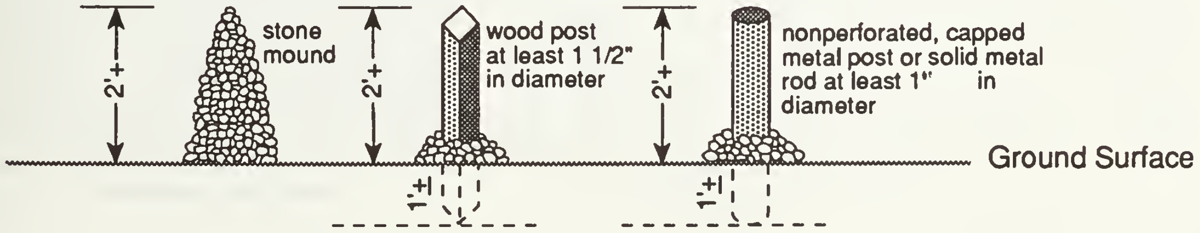
A. Drawing of an ideal lode mining claim (metes and bounds survey method)



B. Drawing of a section of land showing types of placer mining claims (PMC) and a mill site (MS). The legal description method is based on the U.S. Public Land Survey

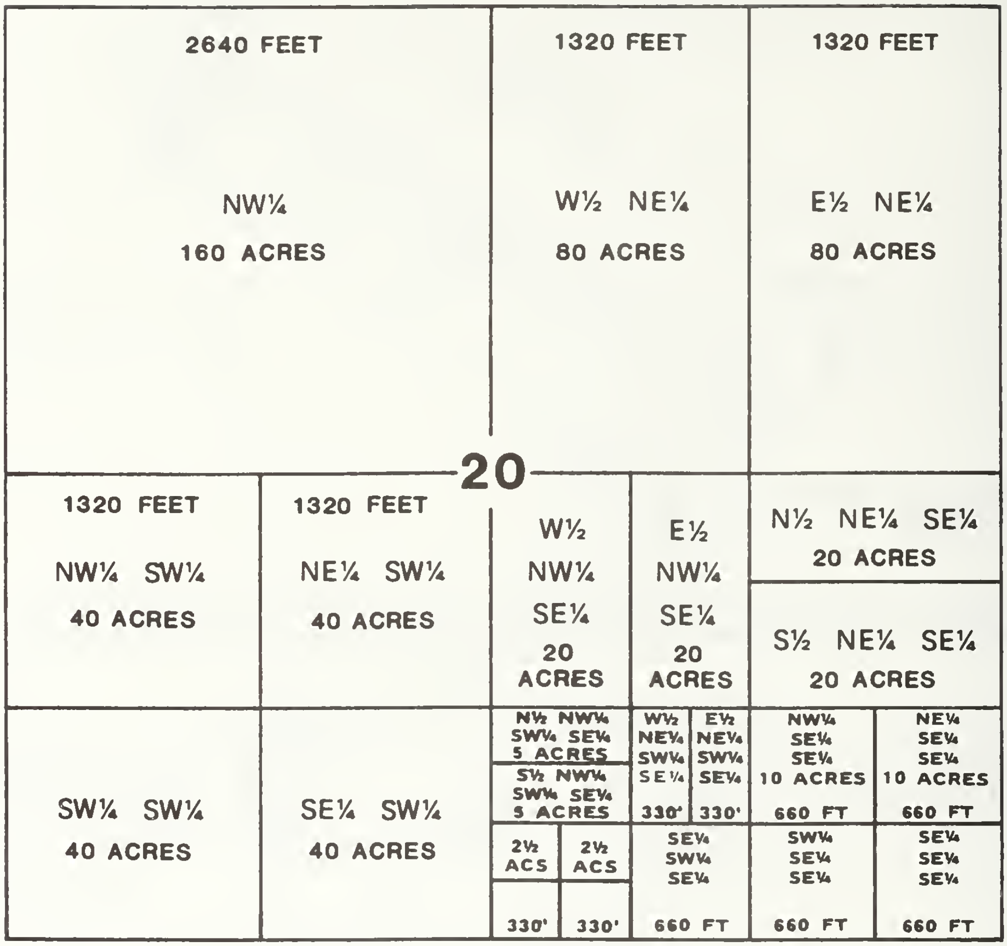


C. The following are the only acceptable monuments that may be used


2'+
stone mound
2'+
wood post at least 1 1/2" in diameter
2'+
nonperforated, capped metal post or solid metal rod at least 1" in diameter
Ground Surface
1'+
1'+

F-2 Methods of Describing and Monumenting Mining Claims and Mills Sites in California

Diagram of a section of land



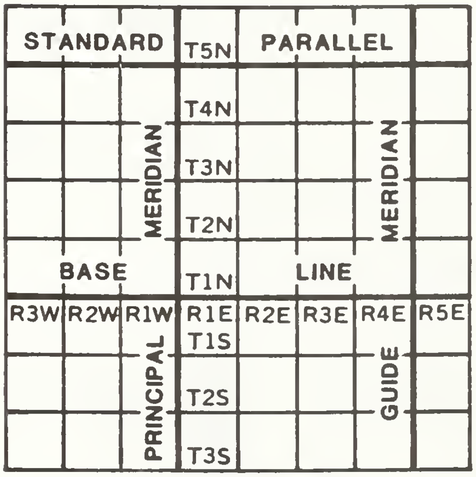
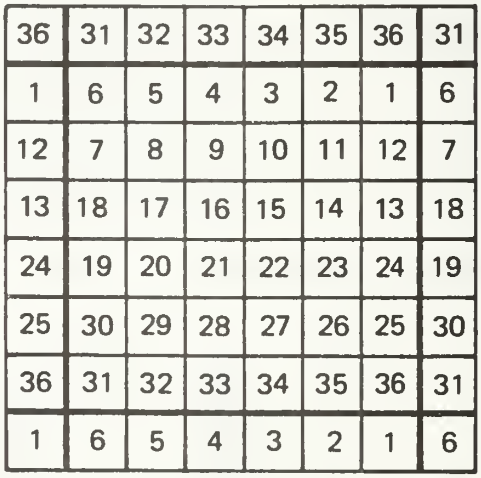


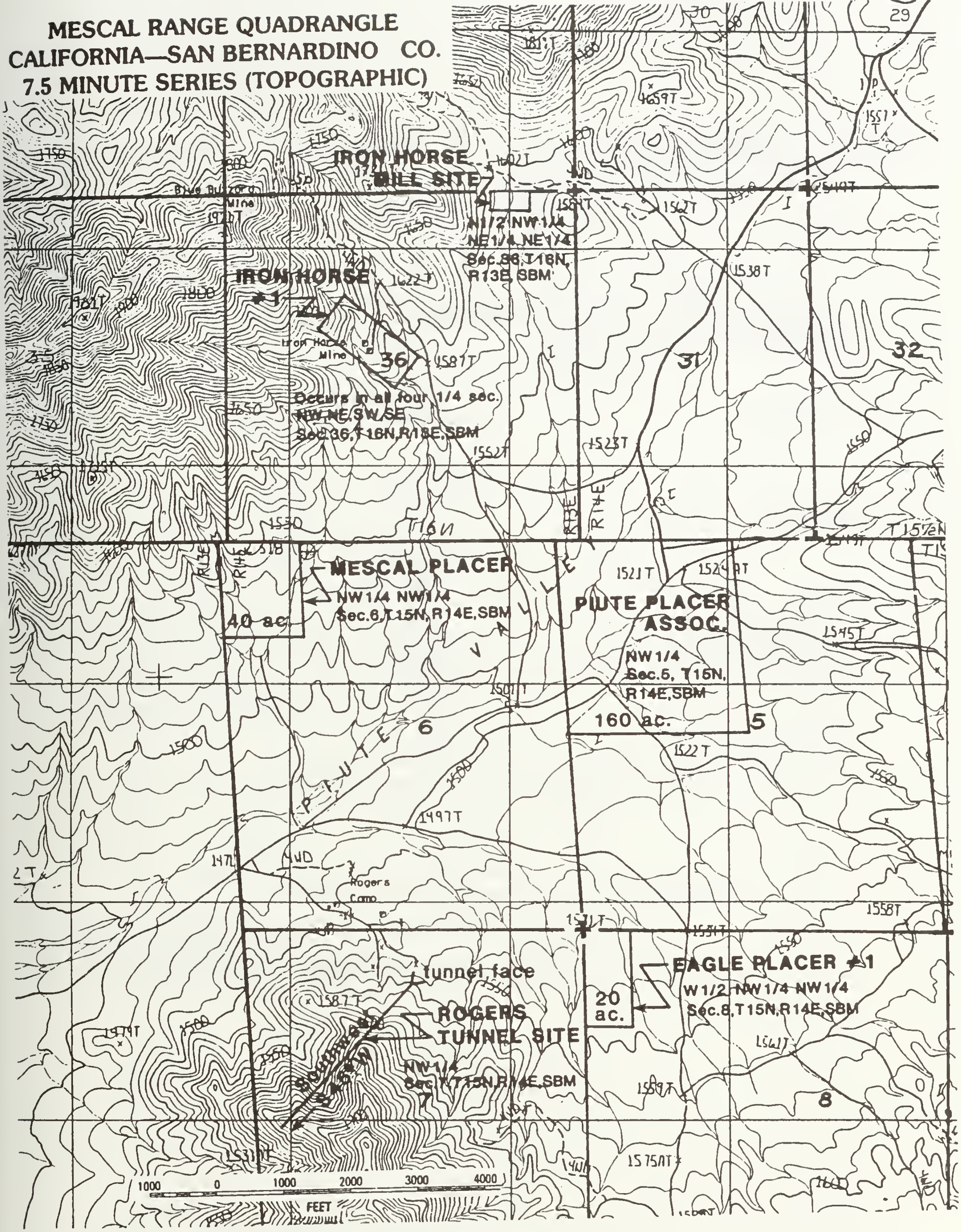
Diagram showing division of tract into Townships



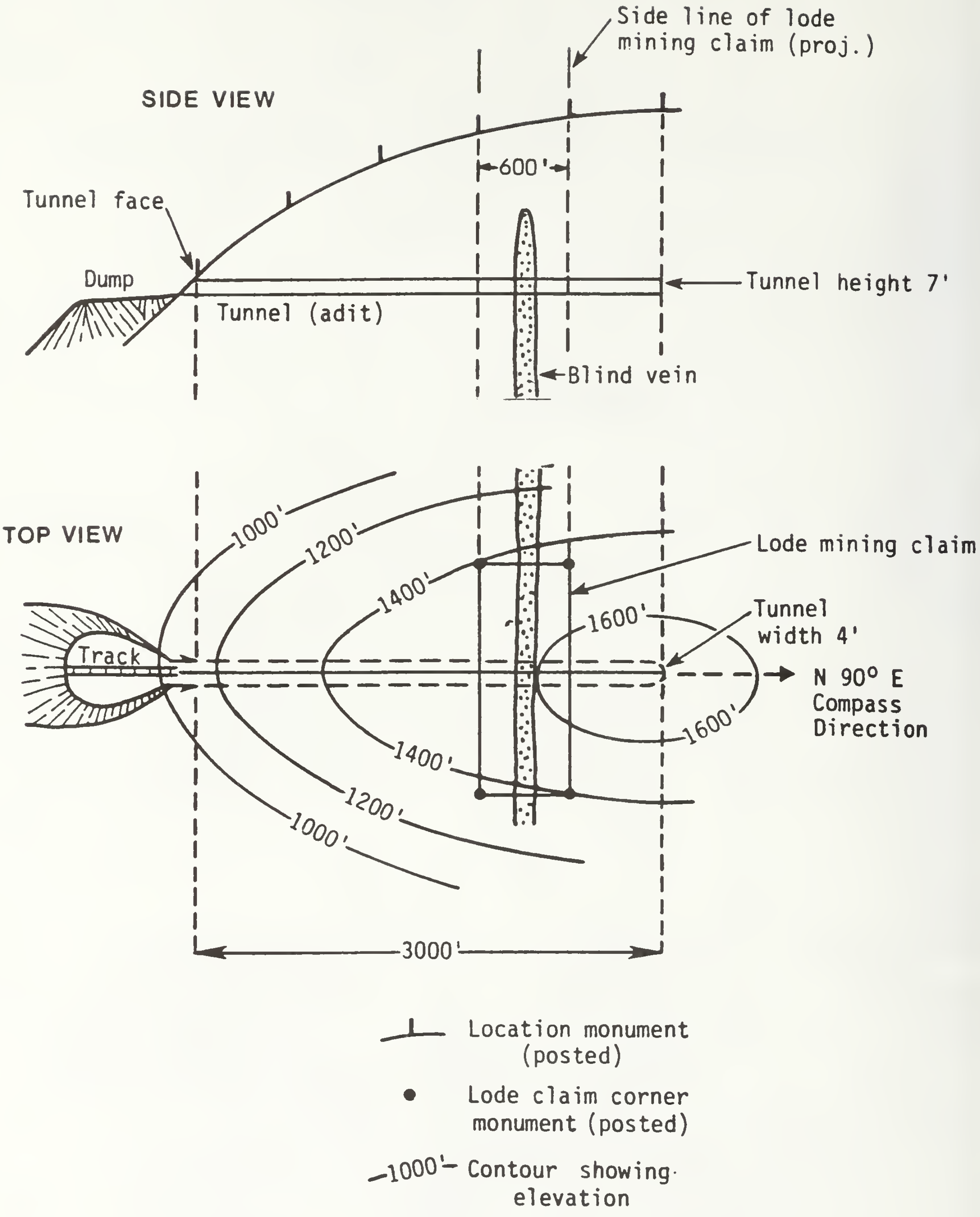
36	31	32	33	34	35	36	31
1	6	5	4	3	2	1	6
12	7	8	9	10	11	12	7
13	18	17	16	15	14	13	18
24	19	20	21	22	23	24	19
25	30	29	28	27	26	25	30
36	31	32	33	34	35	36	31
1	6	5	4	3	2	1	6

Sectional map of Township showing adjoining Sections

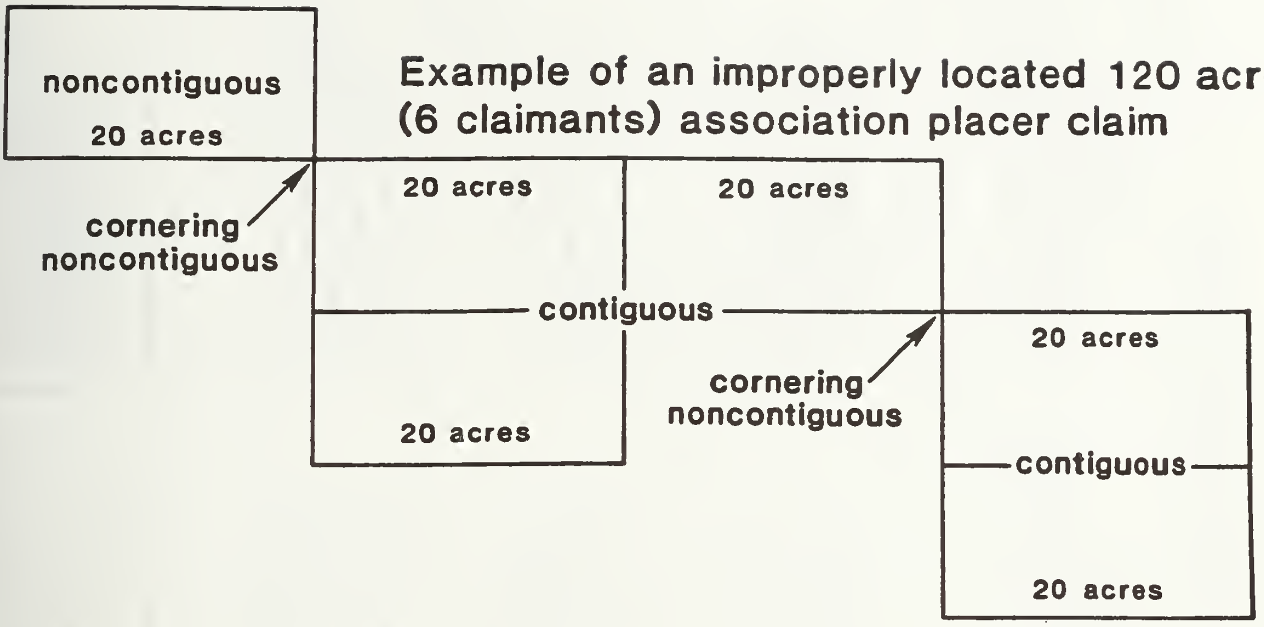
F-3 Diagrams Showing Arrangement of Townships, Ranges, Sections, and Subdivisions of Sections

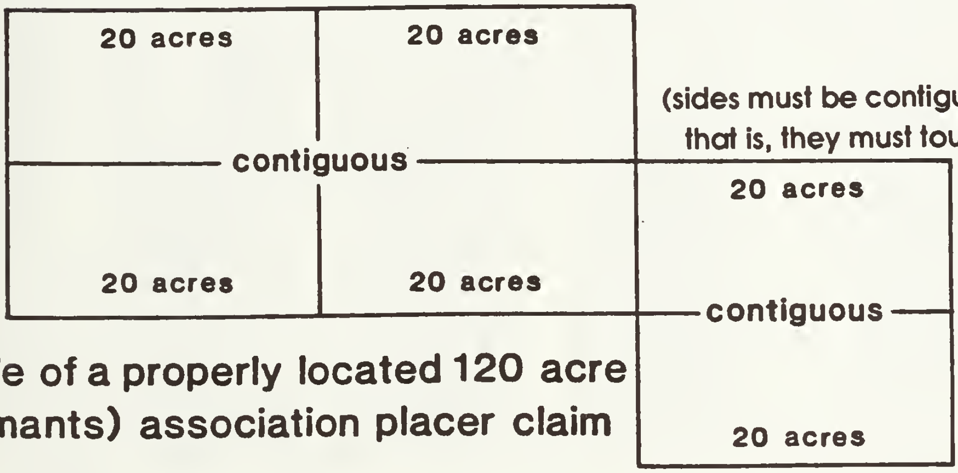

MESCAL RANGE QUADRANGLE
CALIFORNIA—SAN BERNARDINO CO.
7.5 MINUTE SERIES (TOPOGRAPHIC)
IRON HORSE MILL SITE
N1/2 NW1/4 NE1/4 NE1/4 Sec.36,T16N, R13E, SBM
Blue Buzzard Mine
IRON HORSE #1
Iron Horse Mine
36
Occurs in all four 1/4 sec. NW,NE,SW,SE Sec.36,T16N,R13E,SBM
31
32
29
30
T16N
R13E
R14E
MESCAL PLACER
NW1/4 NW1/4 Sec.6,T15N,R14E,SBM
40 ac.
PIUTE PLACER ASSOC.
NW1/4 Sec.5, T15N, R14E,SBM
160 ac.
5
6
PIUTE VALLEY
Rogers Camp
tunnel face
ROGERS TUNNEL SITE
NW1/4 Sec.7,T15N,R14E,SBM
7
EAGLE PLACER #1
W1/2 NW1/4 NW1/4 Sec.8,T15N,R14E,SBM
20 ac.
8
T15½N
1000 0 1000 2000 3000 4000
FEET

F-4 U.S. Geological Survey Topographic Map with Added Sketches of Hypothetical Mining Claims and Sites



F-5 Ideal Tunnel Site Location, Showing an Encountered Blind Vein and Subsequently Located Lode Mining Claim


Example of an improperly located 120 acre (6 claimants) association placer claim


Example of a properly located 120 acre (6 claimants) association placer claim

(sides must be contiguous; that is, they must touch)

F-6 Improperly and Properly Located 120-Acre Association Placer Claims

MINING CLAIM ANNUAL FILING REQUIREMENTS

(Maintenance Fees are *paid* in advance to hold claims/sites for the upcoming assessment year)
(Waivers from the fees are *filed* in advance to hold the claims/sites for the upcoming assessment year)

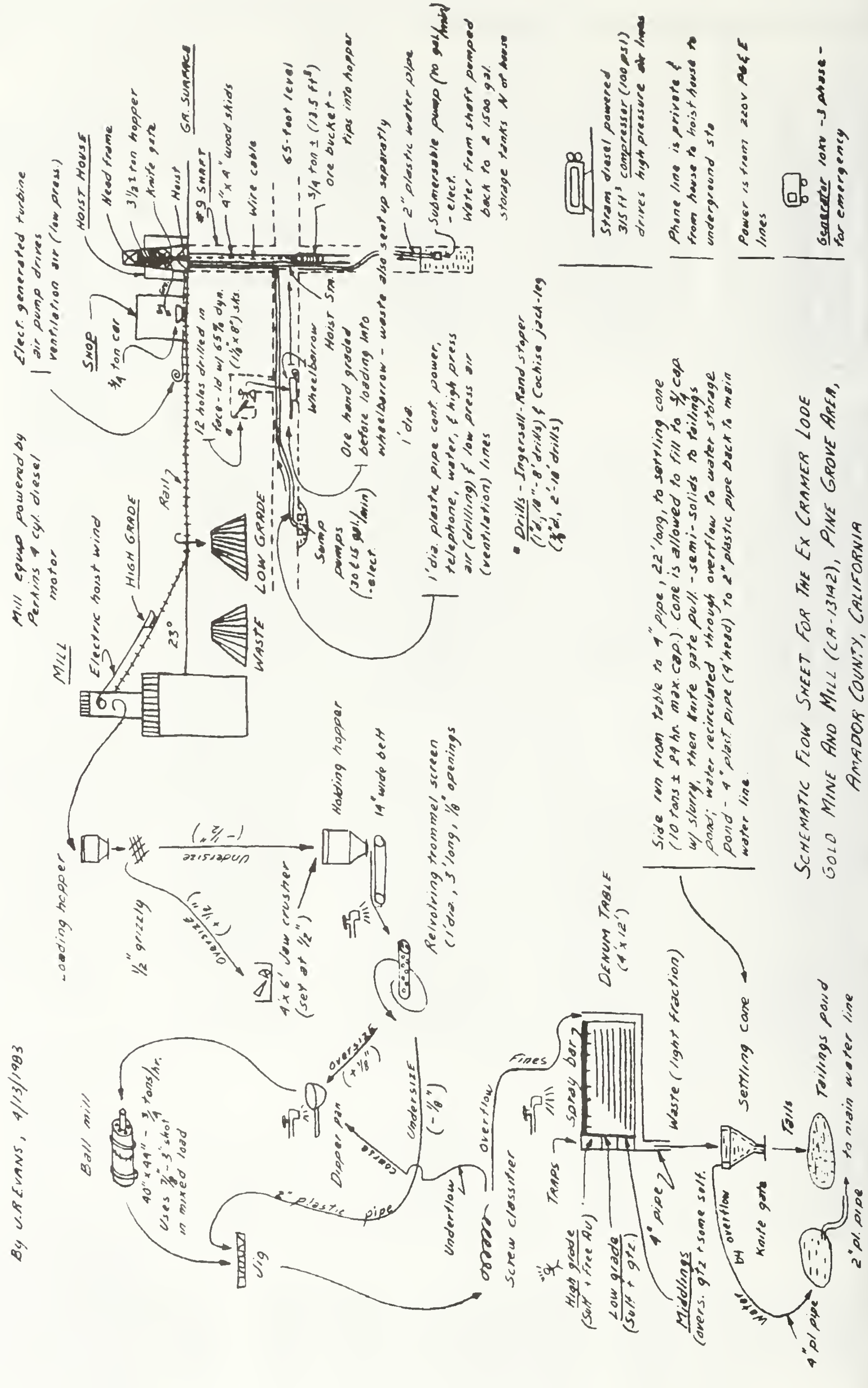
	Placer/Lode Claims, Mill & Tunnel Sites (more than 10)	Placer/Lode Claim (10 or fewer claims/sites held collectively nationwide by claimant and all related parties)	Mill Site (10 or fewer claims/sites held collectively nationwide by claimant and all related parties)	Tunnel Site (10 or fewer claims/sites held collectively nationwide by claimant and all related parties)
Act of 8/10/1993:				
Assessment Year 1995 Due Dates: 8/31/94 12/30/94	-Remit $100 per claim/site to BLM by 8/31/94	-File 95 SME/Waiver w/BLM by 8/31/94 -Must have performed 94 Asmt by 8/31/94 to hold claim for upcoming year -File 94 POL w/BLM by 12/30/94 OR -Remit $100 per claim to BLM by 8/31/94	- File 95 SME/Waiver by 8/31/94 (If Waiver is submitted w/$5 per site, the Waiver form will act as the NOI for the 94 assessment year.) - File NOI w/BLM by 12/30/94 OR -Remit $100 per site to BLM by 8/31/94	- File 95 SME/Waiver by 8/31/94 (If Waiver is submitted w/$5 per site, the Waiver form will act as the NOI for the 94 assessment year.) - File NOI w/BLM by 12/30/94 OR -Remit $100 per site to BLM by 8/31/94
Assessment Year 1996 Due Dates: 8/31/95 12/30/95	-Remit $100 per claim/site to BLM by 8/31/95	-File 96 SME/Waiver w/BLM by 8/31/95 -Must have performed 95 Asmt by 8/31/95 to hold claim for upcoming year -File 95 POL w/BLM by 12/30/95 OR -Remit $100 per claim to BLM by 8/31/95	- File 96 SME/Waiver by 8/31/95 (If Waiver is submitted w/$5 per site, the Waiver form will act as the NOI for the 95 assessment year.) - File NOI w/BLM by 12/30/95 OR -Remit $100 per site to BLM by 8/31/95	- File 96 SME/Waiver by 8/31/95 (If Waiver is submitted w/$5 per site, the Waiver form will act as the NOI for the 95 assessment year.) - File NOI w/BLM by 12/30/95 OR -Remit $100 per site to BLM by 8/31/95
Assessment Year 1997 Due Dates: 8/31/96 12/30/96	-Remit $100 per claim/site to BLM by 8/31/96	-File 97 SME/Waiver w/BLM by 8/31/96 -Must have performed 96 Asmt by 8/31/96 to hold claim for upcoming year -File 96 POL w/BLM by 12/30/96 OR -Remit $100 per claim to BLM by 8/31/96	- File 97 SME/Waiver by 8/31/96 (If Waiver is submitted w/$5 per site, the Waiver form will act as the NOI for the 96 assessment year.) - File NOI w/BLM by 12/30/96 OR -Remit $100 per site to BLM by 8/31/96	- File 97 SME/Waiver by 8/31/96 (If Waiver is submitted w/$5 per site, the Waiver form will act as the NOI for the 96 assessment year.) - File NOI w/BLM by 12/30/96 OR -Remit $100 per site to BLM by 8/31/96
Assessment Year 1998 Due Dates: 8/31/97 12/30/97	-Remit $100 per claim/site to BLM by 8/31/97	-File 98 SME/Waiver w/BLM by 8/31/97 -Must have performed 97 Asmt by 8/31/97 to hold claim for upcoming year -File 97 POL w/BLM by 12/30/97 OR -Remit $100 per claim to BLM by 8/31/97	- File 98 SME/Waiver by 8/31/97 (If Waiver is submitted w/$5 per site, the Waiver form will act as the NOI for the 97 assessment year.) - File NOI w/BLM by 12/30/97 OR -Remit $100 per site to BLM by 8/31/97	- File 98 SME/Waiver by 8/31/97 (If Waiver is submitted w/$5 per site, the Waiver form will act as the NOI for the 97 assessment year.) - File NOI w/BLM by 12/30/97 OR -Remit $100 per site to BLM by 8/31/97

Assessment Year 1999 Due Dates: 8/31/98 12/30/98	-Remit $100 per claim/site to BLM by 8/31/98	-File 99 SME/Waiver w/BLM by 8/31/98 -Must have performed 98 Asmt by 8/31/98 to hold claim for upcoming year -File 98 POL w/BLM by 12/30/98 OR -Remit $100 per claim to BLM by 8/31/98	- File 99 SME/Waiver by 8/31/98 (If Waiver is submitted w/$5 per site, the Waiver form will act as the NOI for the 98 assessment year.) - File NOI w/BLM by 12/30/98 OR -Remit $100 per site to BLM by 8/31/98	- File 99 SME/Waiver by 8/31/98 (If Waiver is submitted w/$5 per site, the Waiver form will act as the NOI for the 98 assessment year.) - File NOI w/BLM by 12/30/98 OR -Remit $100 per site to BLM by 8/31/98
Act of 10/21/1998 amending 8/10/93 Act:				
Assessment Year 2000 Due Dates: 9/1/1999 12/30/1999	-Remit $100 per claim/site to BLM by 9/1/1999	-File 2000 SME/Waiver w/BLM by 9/1/1999 -Must have performed 99 Asmt by 9/1/1999 to hold claim for upcoming year -File 1999 POL w/BLM by 12/30/1999 OR -Remit $100 per claim to BLM by 9/1/1999	- File 2000 SME/Waiver by 9/1/99 (If Waiver is submitted w/$5 per site, the Waiver form will act as the NOI for the 99 assessment year.) - File NOI w/BLM by 12/30/99 OR -Remit $100 per site to BLM by 9/1/99	- File 2000 SME/Waiver by 9/1/99 (If Waiver is submitted w/$5 per site, the Waiver form will act as the NOI for the 99 assessment year.) - File NOI w/BLM by 12/30/99 OR -Remit $100 per site to BLM by 9/1/99
Assessment Year 2001 Due Dates: 9/1/2000 12/30/2000	-Remit $100 per claim/site to BLM by 9/1/2000	-File 2001 SME/Waiver w/BLM by 9/1/2000 -Must have performed 2000 Asmt by 9/1/2000 to hold claim for upcoming year -File 2000 POL w/BLM by 12/30/2000 OR -Remit $100 per claim to BLM by 9/1/2000	- File 2001 SME/Waiver by 9/1/2000 (If Waiver is submitted w/$5 per site, the Waiver form will act as the NOI for the 2000 assessment year.) - File NOI w/BLM by 12/30/2000 OR -Remit $100 per site to BLM by 9/1/2000	- File 2001 SME/Waiver by 9/1/2000 (If Waiver is submitted w/$5 per site, the Waiver form will act as the NOI for the 2000 assessment year.) - File NOI w/BLM by 12/30/2000 OR -Remit $100 per site to BLM by 9/1/2000
Assessment Year 2002 Due Dates: 9/1/2001 12/30/2001	-Remit $100 per claim/site to BLM by 9/1/2001	-File 2002 SME/Waiver w/BLM by 9/1/2001 -Must have performed 2001 Asmt by 9/1/2001 to hold claim for upcoming year -File 2001 POL w/BLM by 12/30/2001 OR -Remit $100 per claim to BLM by 9/1/2001	- File 2002 SME/Waiver by 9/1/2001 (If Waiver is submitted w/$5 per site, the Waiver form will act as the NOI for the 2001 assessment year.) - File NOI w/BLM by 12/30/2001 OR -Remit $100 per site to BLM by 9/1/2001	- File 2002 SME/Waiver by 9/1/2001 (If Waiver is submitted w/$5 per site, the Waiver form will act as the NOI for the 2001 assessment year.) - File NOI w/BLM by 12/30/2001 OR -Remit $100 per site to BLM by 9/1/2001

ASSESSMENT YEAR 2001-2002 -- No filing requirements have been enacted by Congress as of the date of this publication. Congress may continue to pass legislation affecting filing requirements and, consequently, the procedure may change. As an owner of mining claims, you are responsible for keeping yourself informed of the changes in the filing requirements and the mining laws, and it would be wise of you to contact our office periodically to stay up to date.

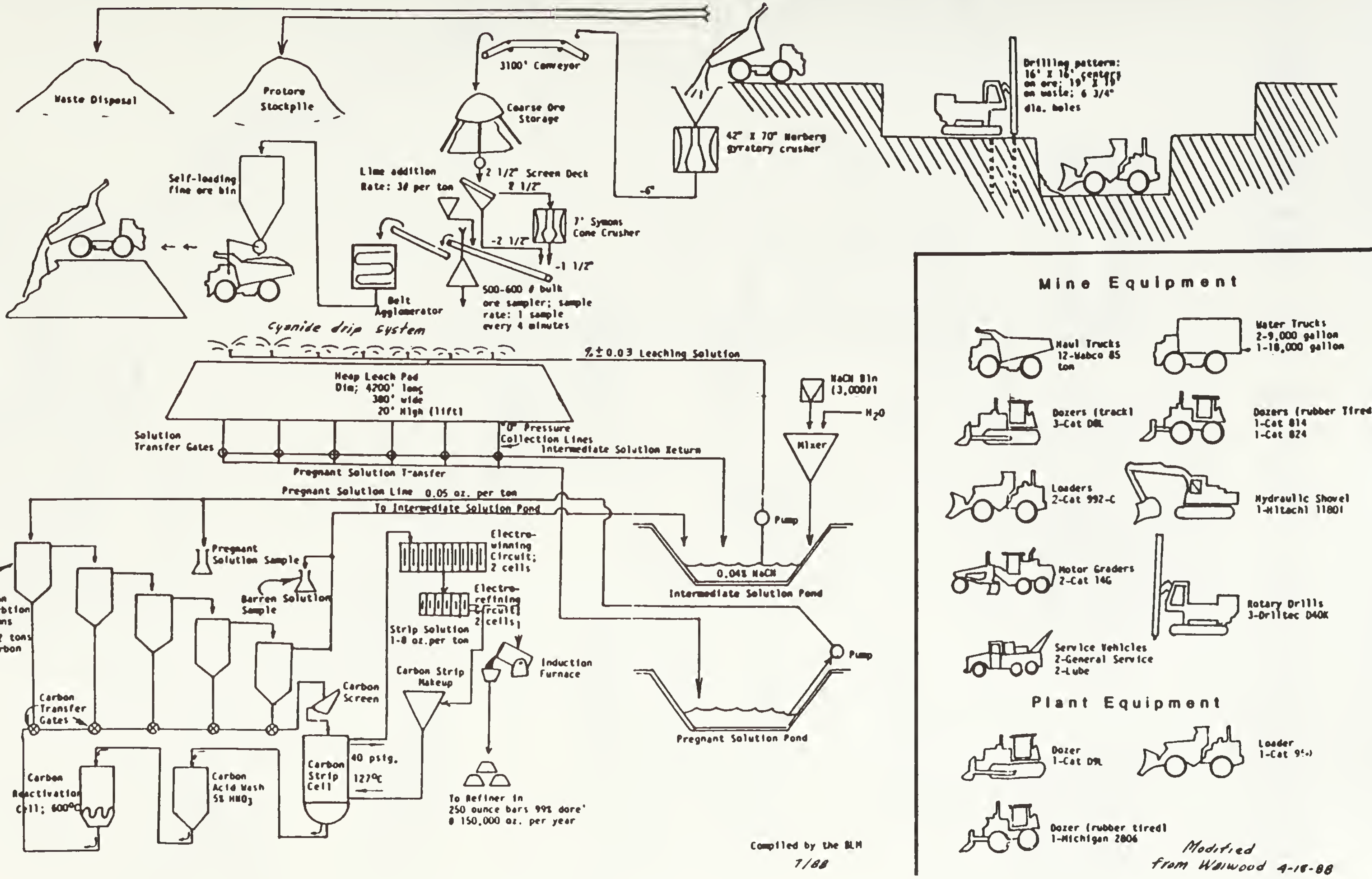
Abbreviations:
Asmt - Assessment work
BLM - Bureau of Land Management
NOI - Notice of Intent to Hold
POL - Proof of Labor (Affidavit of Assessment Work)
SME - Small Miner Exemption/Waiver (Maintenance Fee Payment Waiver Certification)

Fees:
Small Miner Exemption/Waiver - No charge
Waiver in Lieu of NOI for Mill & Tunnel Sites - $5.00 per site
POL - $5.00 per claim
NOI - $5.00 per site
Maintenance Fee - $100.00 per claim/site

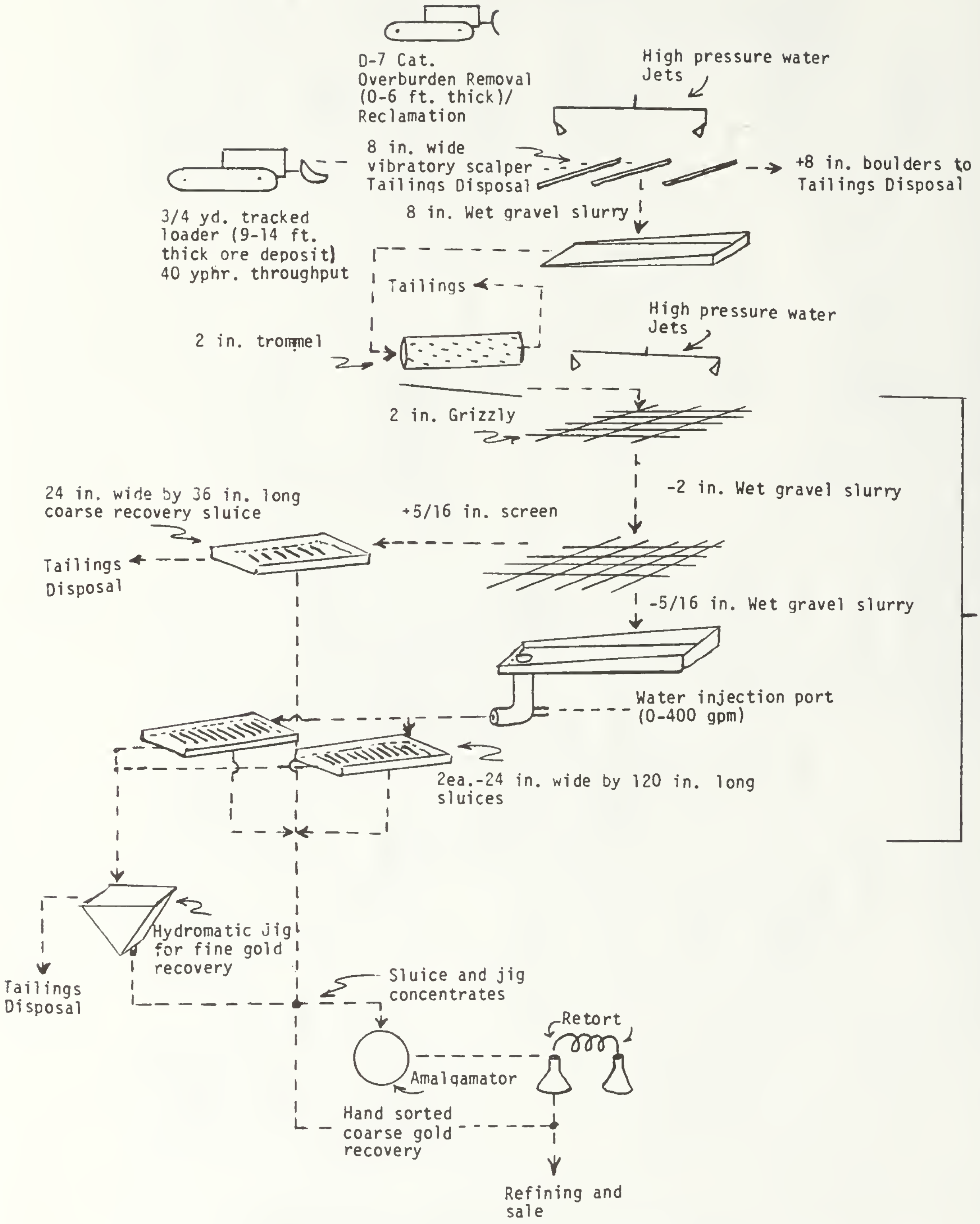

By U.R.Evans, 4/13/1983
Ball mill
40"x44" - 3/4 tons/hr. Uses 7/8"-3" shot in mixed load
Jig
2" plastic pipe
Dipper pan
coarse
Oversize (+1/8")
Undersize (-1/8")
Overflow
Underflow
Screw classifier
Fines
Spray bar
Traps
High grade (Sulf + free Au)
Low grade (Sulf + gtz)
Middlings (avers. gtz + some sulf.)
4" pipe
Waste (light fraction)
Denum Table (4'x12')
Settling cone
overflow
Knife gate
Tails
Tailings pond
to main water line
Water
4" pl pipe
2" pl. pipe
Loading hopper
1/2" grizzly
Oversize (+1/2")
Undersize (-1/2")
4x6' Jaw crusher (set at 1/2")
Holding hopper
14" wide belt
Revolving trommel screen (1' dia., 3' long, 1/8" openings)
Mill equip powered by Perkins 4 cyl. diesel motor
MILL
Electric hoist wind
HIGH GRADE
23°
Rail
WASTE
LOW GRADE
Elect. generated turbine air pump drives ventilation air (low press.)
SHOP
3/4 ton car
12 holes drilled in face - ld w/ 65% dyn. (1 1/8"x8") sks.
Wheelbarrow
Hoist Stn.
Ore hand graded before loading into wheelbarrow - waste also set up separately
Sump pumps (30 ± 15 gal./min) elect.
1' dia.
1' dia. plastic pipe cont. power, telephone, water, & high press air (drilling) & low press air (ventilation) lines
• Drills - Ingersoll-Rand stoper (1"d., 10"-8' drills) & Cochise jack-leg (3/4"d., 2'-10' drills)
HOIST HOUSE
Head frame
3 1/2 ton hopper
Knife gate
Hoist
GR. SURFACE
#9 SHAFT
4"x4' wood skids
Wire cable
65-foot level
3/4 ton ± (13.5 ft³) ore bucket - tips into hopper
2" plastic water pipe
Submersible pump (10 gal/min) - elect.
Water from shaft pumped back to 2 1500 gal. storage tanks N of house
Steam diesel powered 315 ft³ compressor (100 psi) drives high pressure air lines
Phone line is private & from house to hoist house to underground sta
Power is from 220V PG&E lines
Generator 10KV - 3 phase - for emergency
Side run from table to 4" pipe, 22' long, to settling cone (10 tons ± 24 hr. max. cap.) Cone is allowed to fill to 3/4 cap w/ slurry, then knife gate pull - semi-solids to tailings pond; water recirculated through overflow to water storage pond - 4" plast pipe (4' head) to 2" plastic pipe back to main water line.
SCHEMATIC FLOW SHEET FOR THE EX CRAMER LODE GOLD MINE AND MILL (CA-13142), PINE GROVE AREA, AMADOR COUNTY, CALIFORNIA

F-8 Schematic Flow Sheet for the Ex Cramer Lode Gold Mine

Flow Diagram of Operations at Gold Fields Mining Co.
Mesquite Gold Mine


Waste Disposal
Protore Stockpile
3100' Conveyor
Coarse Ore Storage
42" X 70" Norberg gyratory crusher
-6"
Drilling pattern: 16' X 16' centers on ore; 19' X 19' on waste; 6 3/4" dia. holes
Self-loading fine ore bin
Lime addition Rate: 3# per ton
2 1/2" Screen Deck
2 1/2"
7' Symons Cone Crusher
-2 1/2"
-1 1/2"
Belt Agglomerator
500-600 # bulk ore sampler; sample rate: 1 sample every 4 minutes
Cyanide drip system
%± 0.03 Leaching Solution
Heap Leach Pad Dim; 4200' long 380' wide 20' High (1lift)
Solution Transfer Gates
"0" Pressure Collection Lines
Intermediate Solution Return
Pregnant Solution Transfer
Pregnant Solution Line 0.05 oz. per ton
To Intermediate Solution Pond
NaCN Bin (3,000#)
H₂O
Mixer
Pump
0.04% NaCN
Intermediate Solution Pond
Pump
Pregnant Solution Pond
Pregnant Solution Sample
Barren Solution Sample
Electro-winning Circuit; 2 cells
Electro-refining Circuit; 2 cells
Strip Solution 1-8 oz. per ton
Induction Furnace
Carbon Strip Makeup
To Refiner in 250 ounce bars 99% dore' @ 150,000 oz. per year
Carbon Adsorbtion Columns
Cap: 2 1/2 tons 6 X 16 carbon
Carbon Transfer Gates
Carbon Screen
Carbon Strip Cell
40 psig.
127°C
Carbon Reactivation Cell; 600°C
Carbon Acid Wash 5% HNO₃
Compiled by the BLM 7/88
Mine Equipment
Haul Trucks 12-Wabco 85 ton
Water Trucks 2-9,000 gallon 1-18,000 gallon
Dozers (track) 3-Cat D8L
Dozers (rubber Tired) 1-Cat 814 1-Cat 824
Loaders 2-Cat 992-C
Hydraulic Shovel 1-Hitachi 1180I
Motor Graders 2-Cat 14G
Rotary Drills 3-Drilltec D40K
Service Vehicles 2-General Service 2-Lube
Plant Equipment
Dozer 1-Cat D9L
Loader 1-Cat 9?0
Dozer (rubber tired) 1-Michigan 280B
Modified from Walwood 4-18-88

F-9 Flow Diagram of Operations at the Mesquite Gold Mine



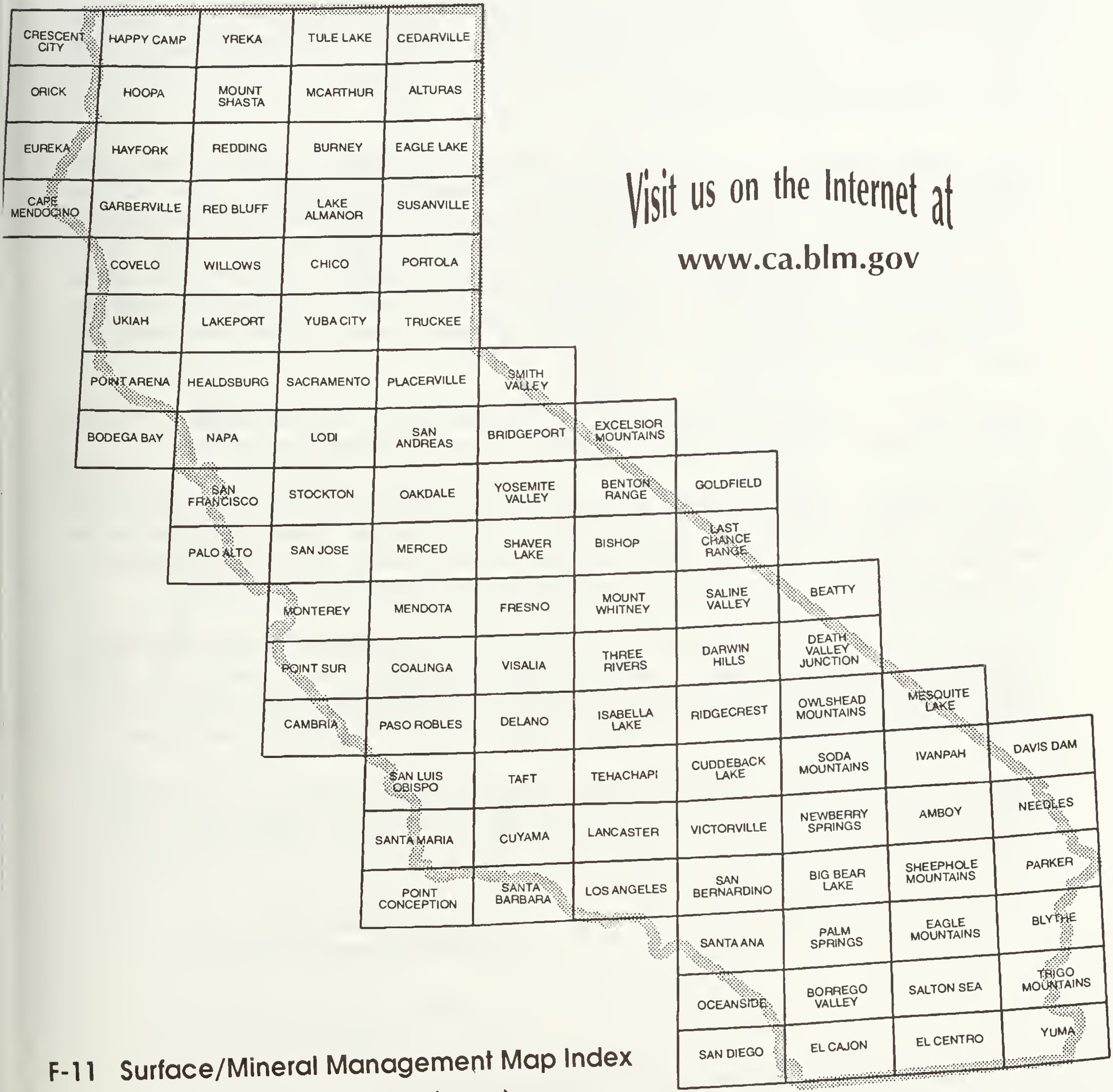
These units are self-contained on an International 190 (1966) truck which includes water pump and stacker/conveyo

F-10 Schematic Diagram of Operations, Golden Eagle Placer Mine

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

BUREAU OF LAND MANAGEMENT

Index to
Surface Management Maps
Minerals Management Maps



Visit us on the Internet at

www.ca.blm.gov

F-11 Surface/Mineral Management Map Index
(see Order Information on next page)

SURFACE MANAGEMENT MAPS
MINERALS MANAGEMENT MAPS

Information Shown on Maps: Intermediate scale maps (1:100,000) are published by the Bureau of Land Management (BLM) for use in management of the public lands. The maps in this series are rectangular in shape, portraying areas that are one degree of longitude wide (from east to west) and 30 minutes of latitude high (from north to south). They are printed on sheets that are 107 cm. by 76 cm. (42" x 30") in size. Maps in this series show township, range, and section lines, roads, streams, towns, and some other cultural and physiographic features.

BLM prints intermediate scale maps in two editions, one called the Surface Management edition and the other the Surface Minerals Management edition. The Surface Management edition portrays public lands managed by the Bureau of Land Management, other Federal lands including those of the National Park Service, Fish and Wildlife Service, and other State lands and private lands. Restrictions in the management of Federal lands established by withdrawals are also shown. The Surface Minerals Management edition has the extent of Federally-owned mineral rights printed over the Surface Management edition.

Map Index: The map index outlines the intermediate scale map quadrangles. Names of the available maps are printed in the center of the quadrangle boundaries.

Price of Maps: Maps published at the intermediate scale of 1:100,000 are priced at $4.00 per copy. When ordering, specify the name of the map desired as shown within the quadrangle; also specify the edition (either Surface Management with land status or Surface and Minerals Management with both land and minerals status).

Where to Order Maps: Intermediate scale maps may be purchased at the offices of the Bureau of Land Management. The BLM Sacramento office carries maps for the entire state. BLM field offices statewide carry maps for their geographic areas. Maps for areas outside of California need to be purchased from the BLM office in that State.

Ordering Instructions: To order maps by mail, send your order to one of the BLM offices listed in this handbook. You may also view the maps by visiting a BLM office.

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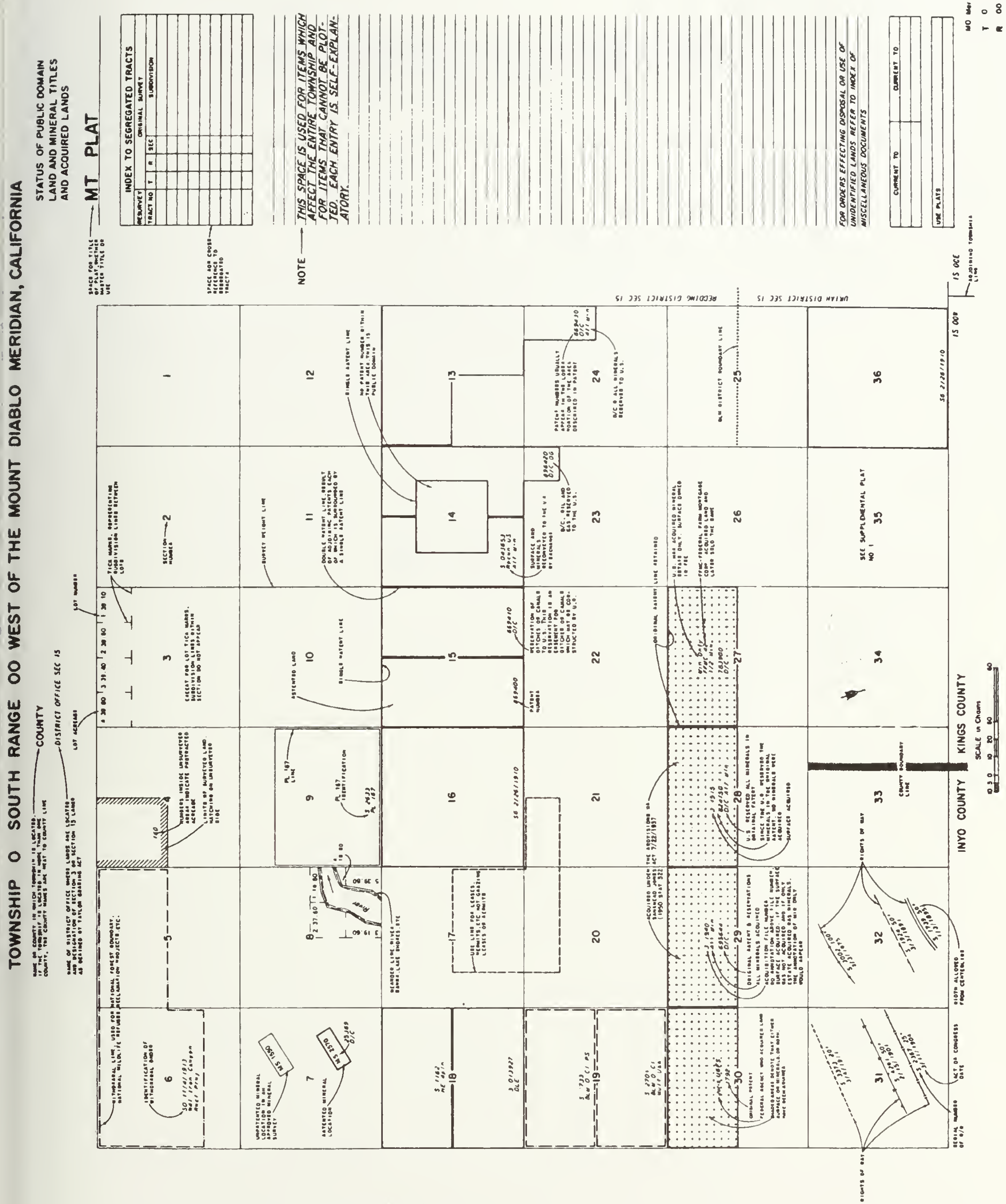
www.ca.blm.gov
www.ca.blm.gov/caso/customerservices.html


TOWNSHIP O SOUTH RANGE OO WEST OF THE MOUNT DIABLO MERIDIAN, CALIFORNIA
STATUS OF PUBLIC DOMAIN LAND AND MINERAL TITLES AND ACQUIRED LANDS
MT PLAT
INDEX TO SEGREGATED TRACTS
NOTE
THIS SPACE IS USED FOR ITEMS WHICH AFFECT THE ENTIRE TOWNSHIP AND FOR ITEMS THAT CANNOT BE PLOTTED. EACH ENTRY IS SELF-EXPLANATORY.
FOR ORDERS EFFECTING DISPOSAL OR USE OF UNIDENTIFIED LANDS REFER TO INDEX OF MISCELLANEOUS DOCUMENTS
CURRENT TO
USE PLATS
COUNTY
DISTRICT OFFICE SEC 15
REDDING DISTRICT SEC 15
UKIAH DISTRICT SEC 15
INYO COUNTY
KINGS COUNTY
SCALE in Chains
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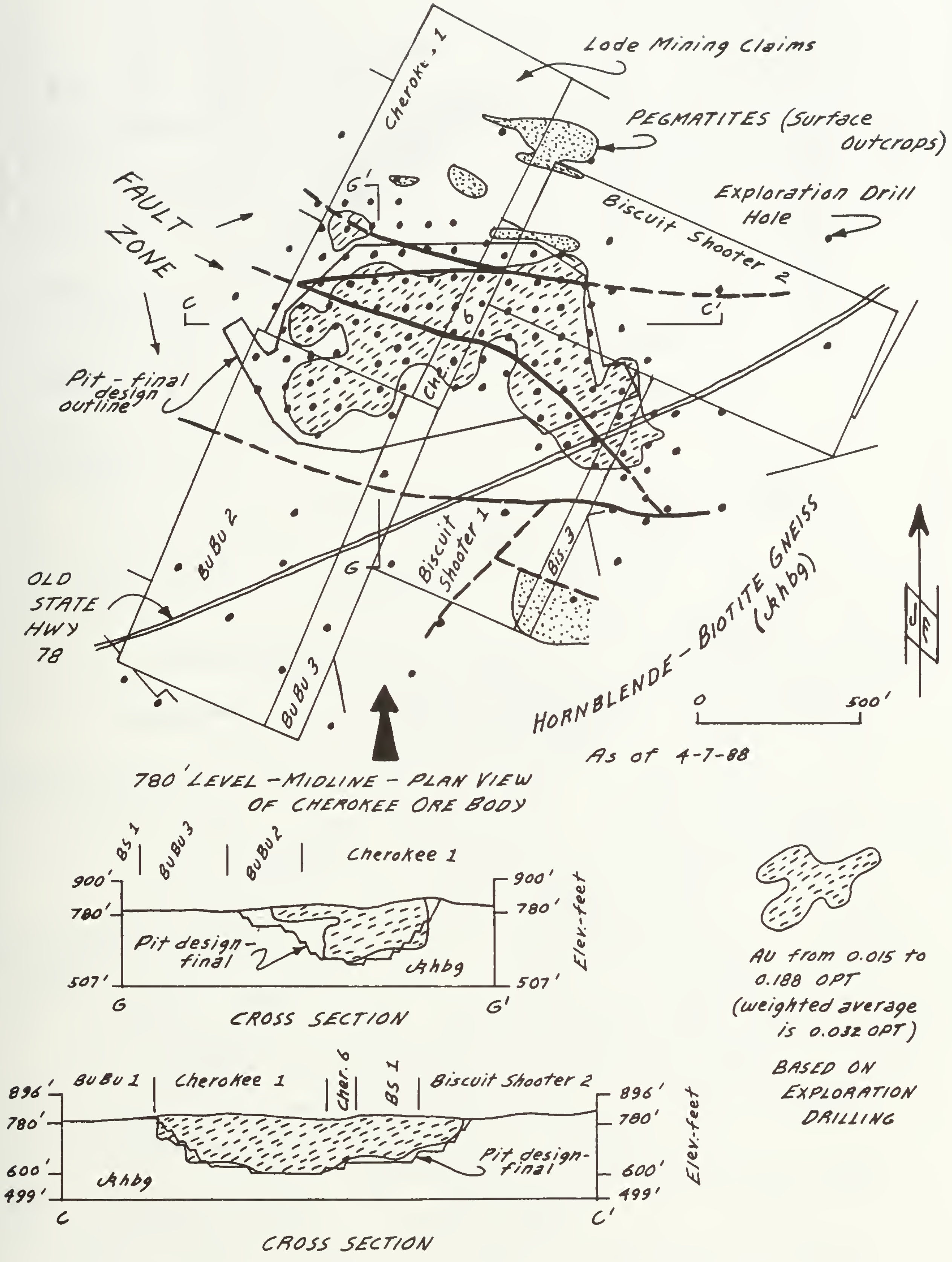
F-12 Sample Township (MTP) Plat

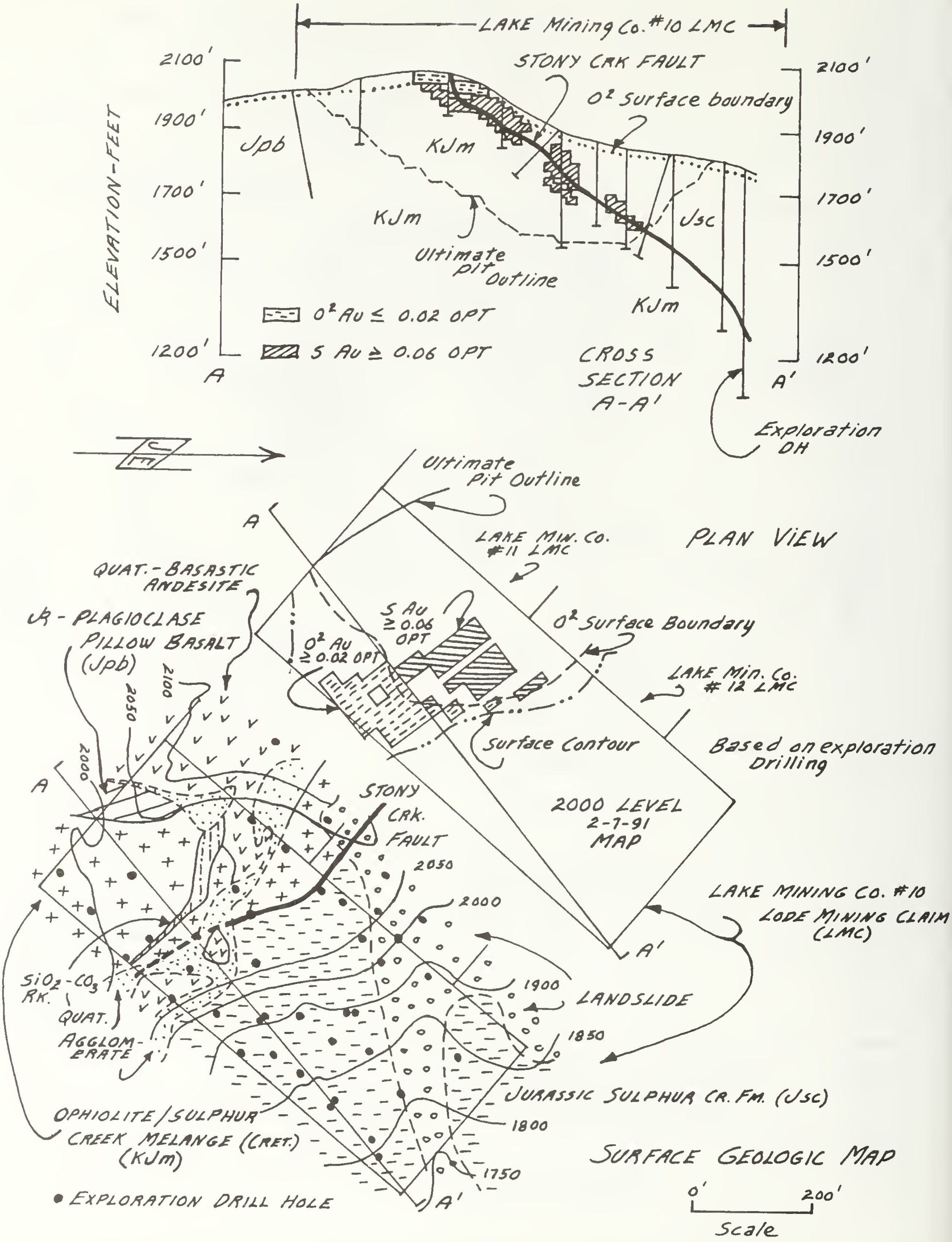
LOCATION AND PATENTING OF MINING CLAIMS AND MILL SITES IN CALIFORNIA

MAPS

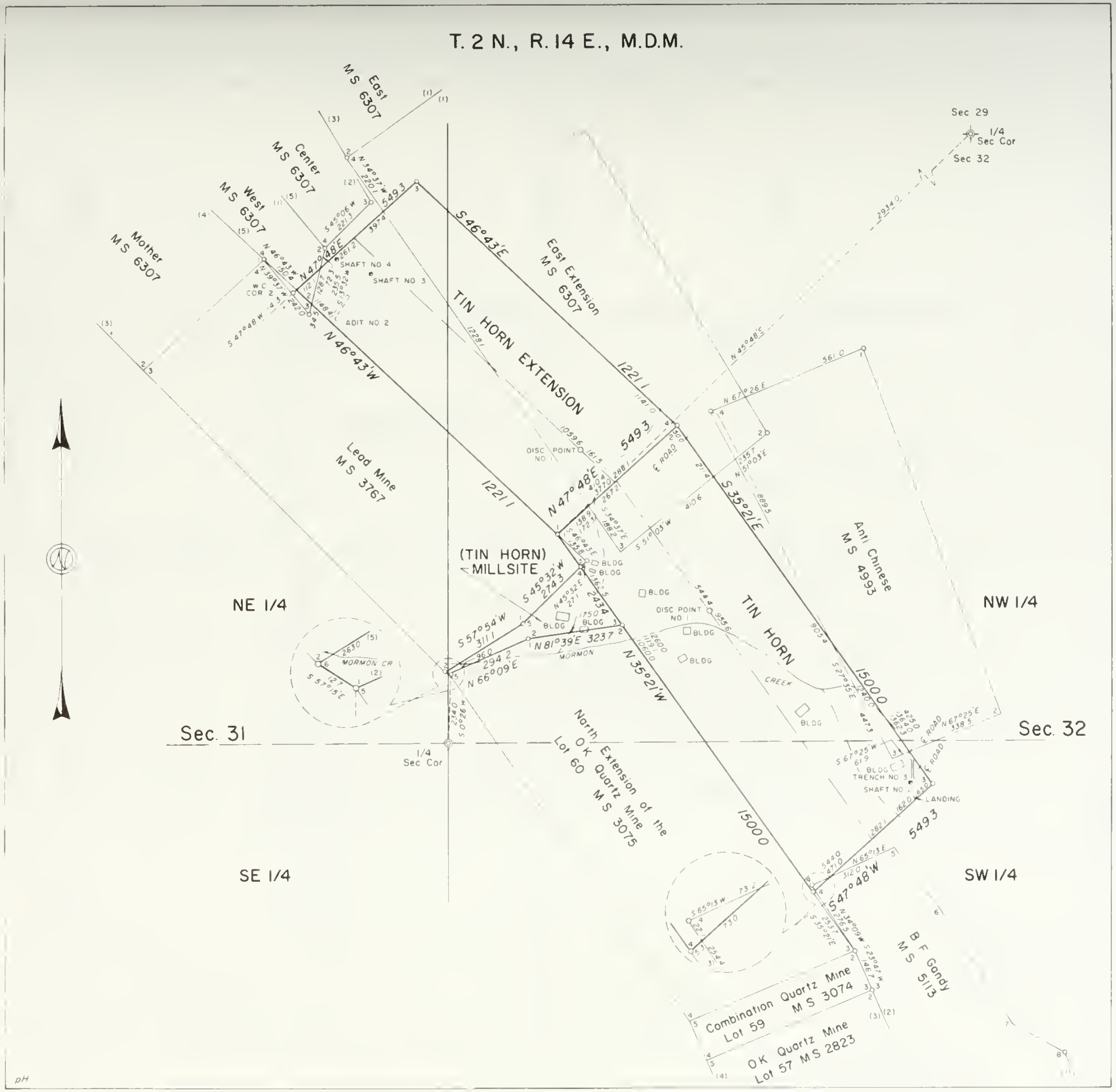


M-1 Geologic Map, Grade Map, and Cross Sections, Cherokee Ore Body, Mesquite Gold Mine

From Evans (1988)



M-2 Geologic Map, Grade Map, and Cross Section, McLaughlin Gold Mine



MINERAL SURVEY
No. 6865 A&B AM.
CALIFORNIA

CLAIM OF

PAUL S. GRAHAM

KNOWN AS THE

TIN HORN, TIN HORN EXTENSION
and (TIN HORN) MILLSITE

SITUATE IN

Secs 31 & 32, T.2 N., R.14E., M D M
TUOLUMNE COUNTY
Tuttletown Mining District
California Land District
Lat. 37°59'08"N., Long 120°27'36"W
at Cors No 1 of the Tin Horn
and the Tin Horn Extension
(Lodes)

100 0 100 200 300 400 500 600
Feet

Magnetic Declination 16°30' East

Surveyed August 16, 1982 to October 21, 1982
by Gilbert A Gardner, Mineral Surveyor

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Branch of Cadastral Survey

Sacramento, California February 8, 1983

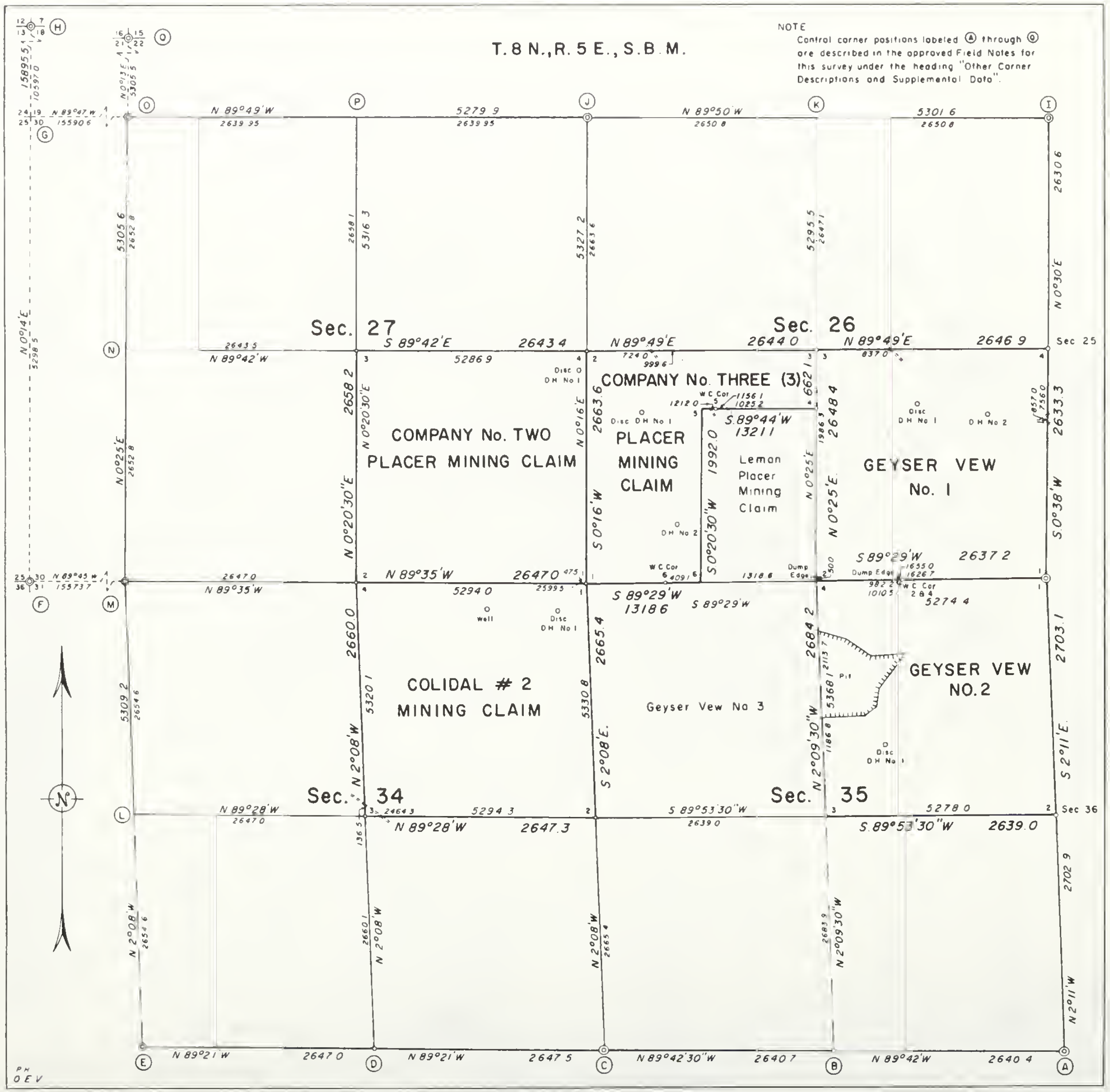
I hereby certify that this plat of Mineral Survey No 6865 A&B AM, California, is strictly conformable to the field notes of said survey which have been examined and approved

Clifford A. Robinson
Chief Cadastral Surveyor

6865 A&B AM.

Vol. 237-3C

M-3 Plat Map Showing a Mineral Survey of Two Lode Mining Claims and One Irregular Mill Site



MINERAL SURVEY
NO. 6882
CALIFORNIA

CLAIM OF

NL INDUSTRIES, INC.

KNOWN AS THE

HECTOR MINE

CONSISTING OF

GEYSER VEW No. 1, GEYSER VEW NO. 2, COMPANY No. TWO PLACER MINING CLAIM, COMPANY No. THREE (3) PLACER MINING CLAIM, & COLIDAL # 2 MINING CLAIM

SITUATE IN

Secs. 26, 27, 34, & 35, T. 8 N., R. 5 E., S B.M.
SAN BERNARDINO COUNTY
(Unknown) Mining District
California Land District
Lat. 34°45'21.2" N., Long. 116°25'00.6" W.
At Corner No. 4 of Geyser Vew No 1

Magnetic Declination 15°30' East

Surveyed March 27, to August 21, 1980
by William P Smith, Mineral Surveyor

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Branch of Cadastral Survey

Sacramento, California *Sept 1, 1981*

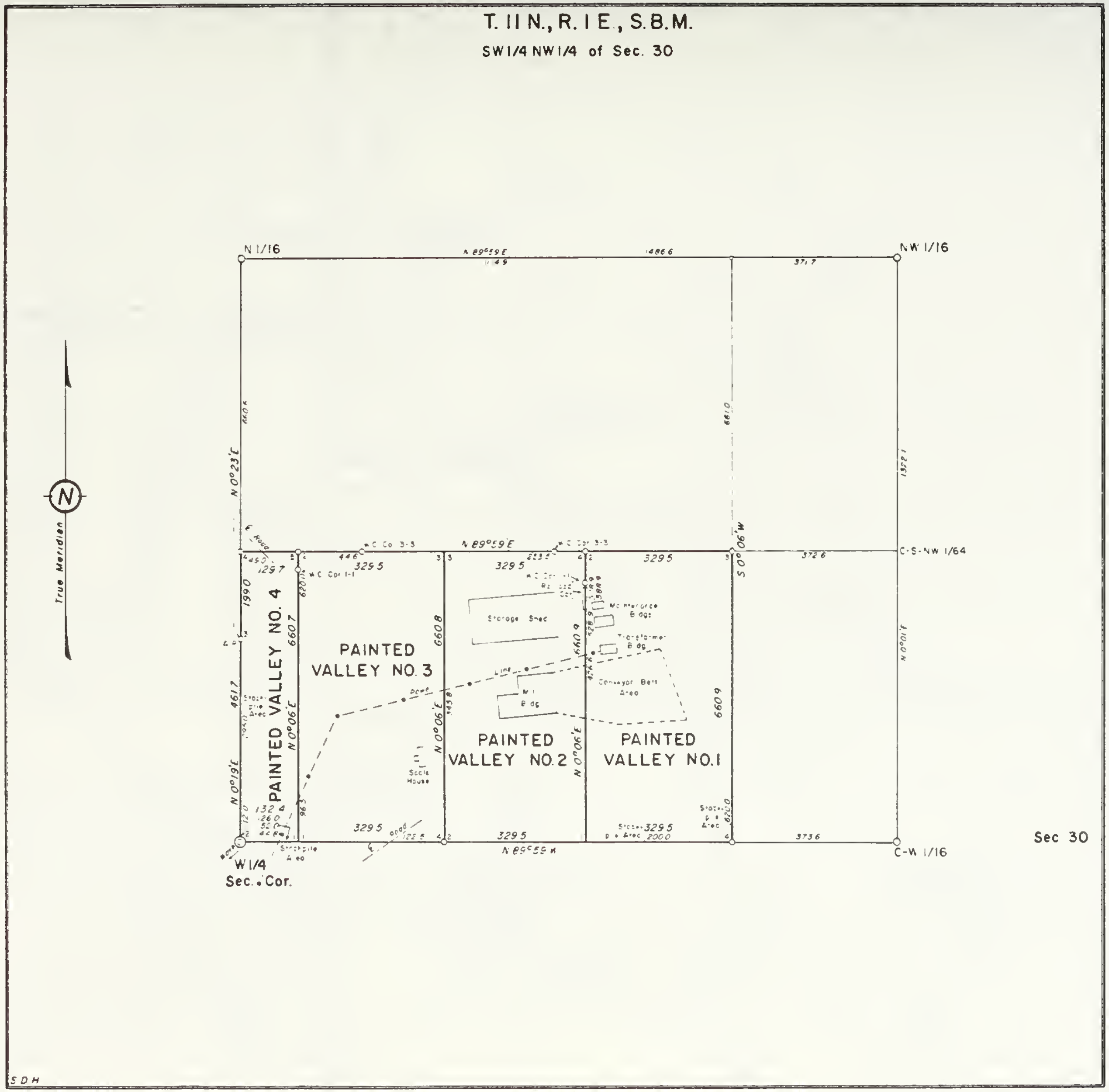
I hereby certify that this plat of Mineral Survey No. 6882, California, is strictly conformable to the field notes of said survey which have been examined and approved.

William D. Jensen

Acting Chief, Branch of Cadastral Survey

6882

M-4 Plat Map Showing a Mineral Survey of Placer Mining Claims



MINERAL SURVEY
No. 6899
CALIFORNIA

CLAIM OF
H. M. PETERSON

KNOWN AS THE
PAINTED VALLEY NO. 1, PAINTED VALLEY NO. 2, PAINTED VALLEY NO. 3, and PAINTED VALLEY NO. 4 (mill sites)
SITUATE IN
Sec. 30, T. 11 N., R. 1 E., S.B.M.
SAN BERNARDINO COUNTY
(Unknown) Mining District
California Land District
Lat. 35°01'10"N., Long. 116°55'30"W.
at Corner No. 4 of Painted Valley
No. 4 mill site

0 50 100 200 400 600
Feet

Magnetic Declination 15 1/2°East

Surveyed April 4, to April 5, 1984
By R. J. Smith, Mineral Surveyor

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Branch of Cadastral Survey

Sacramento, California *July 1, 1985*

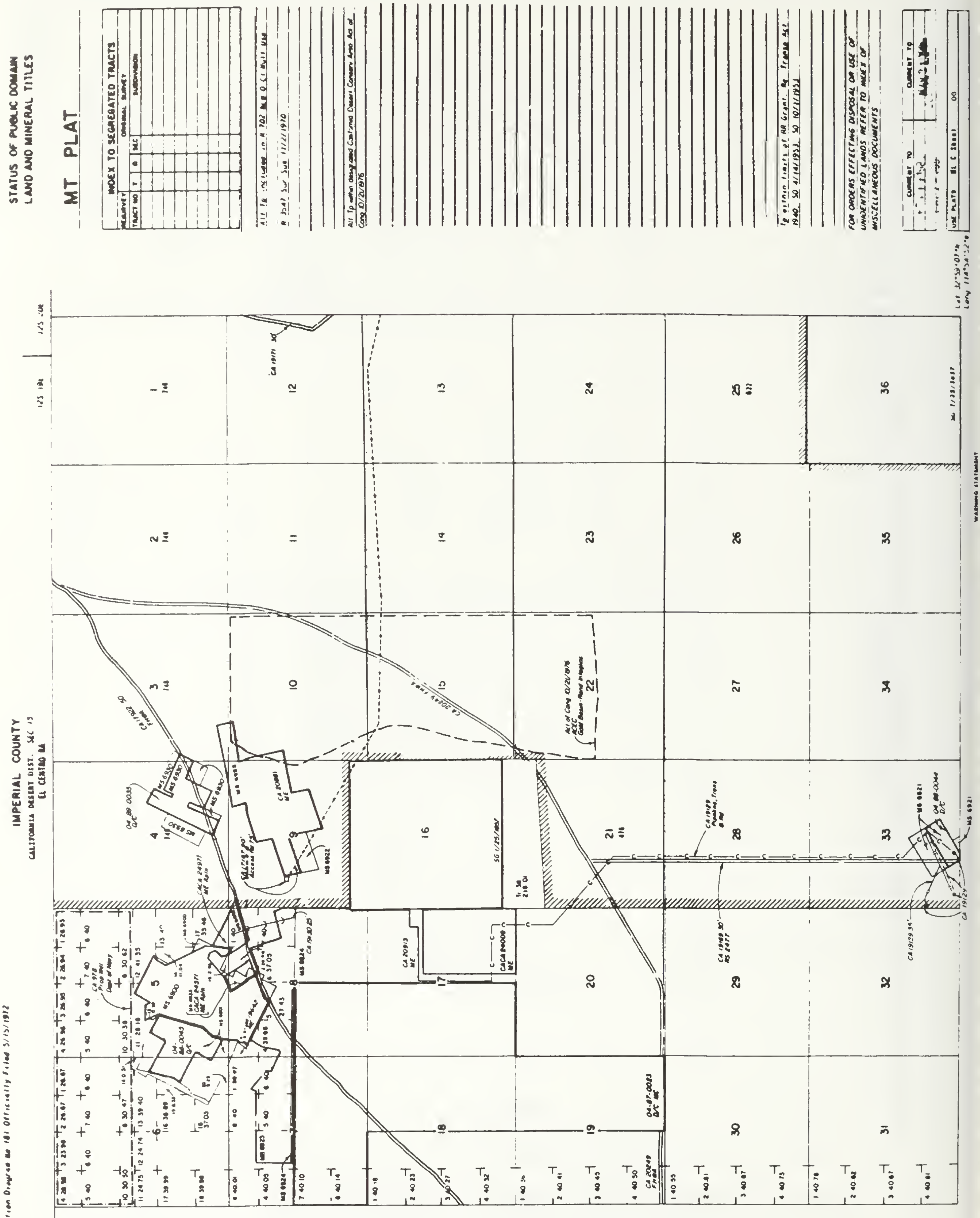
I hereby certify that this plat of Mineral Survey No 6899, California is strictly conformable to the field notes of said survey which have been examined and approved.

Clifford A. Robinson
Chief Cadastral Surveyor

6899

M-5 Plat Map Showing a Mineral Survey of Regular Mill Sites

PARTIALLY SURVEYED TOWNSHIP 13 SOUTH RANGE 19 EAST OF THE SAN BERNARDINO MERIDIAN, CALIFORNIA


STATUS OF PUBLIC DOMAIN
LAND AND MINERAL TITLES
MT PLAT
INDEX TO SEGREGATED TRACTS
IMPERIAL COUNTY
CALIFORNIA DESERT DIST. SEC 13
EL CENTRO RA
FOR ORDERS EFFECTING DISPOSAL OR USE OF UNIDENTIFIED LANDS REFER TO INDEX OF MISCELLANEOUS DOCUMENTS
WARNING STATEMENT
Protraction Diagram No 181 Officially Filed 5/15/1972
1
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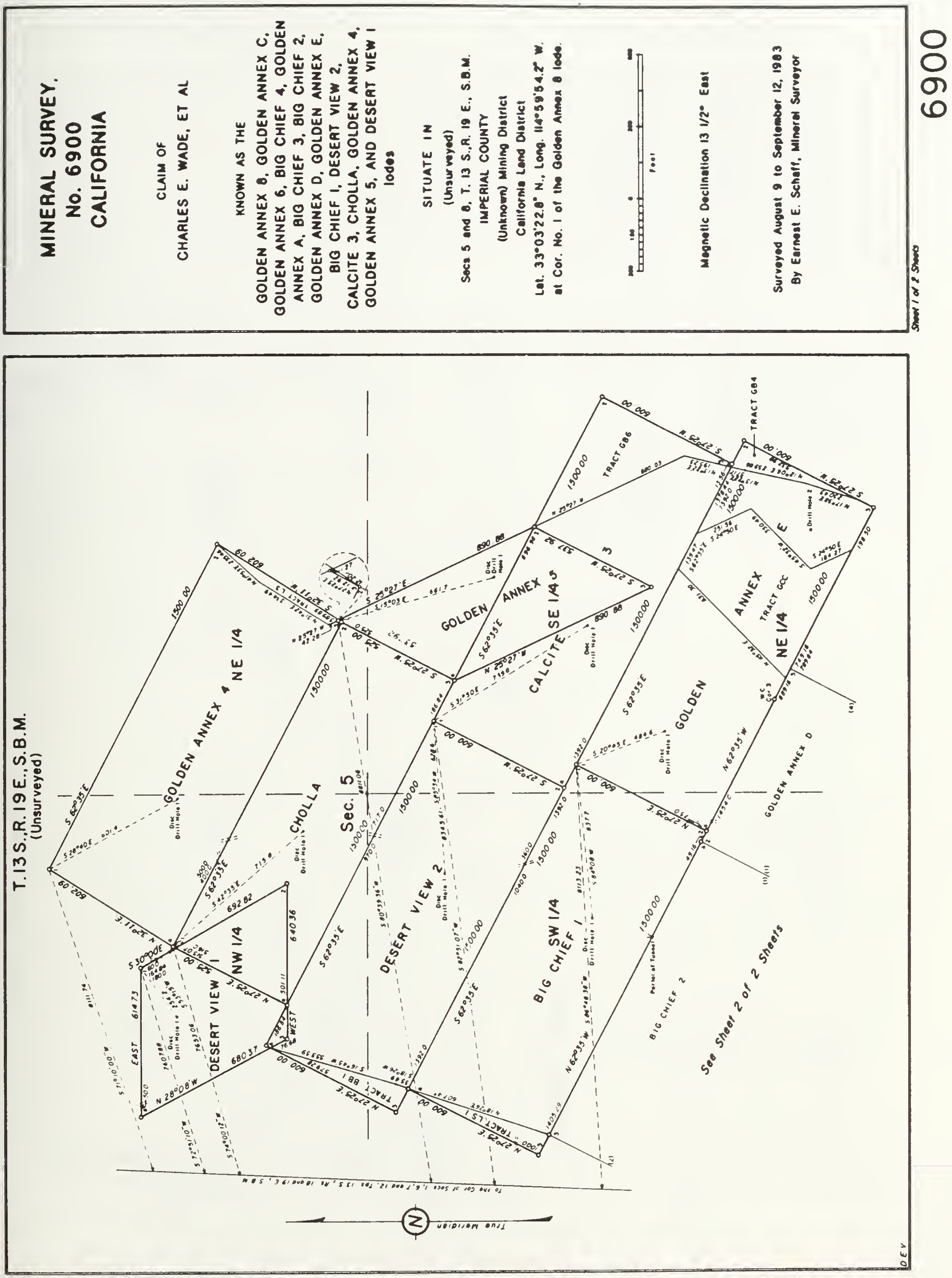
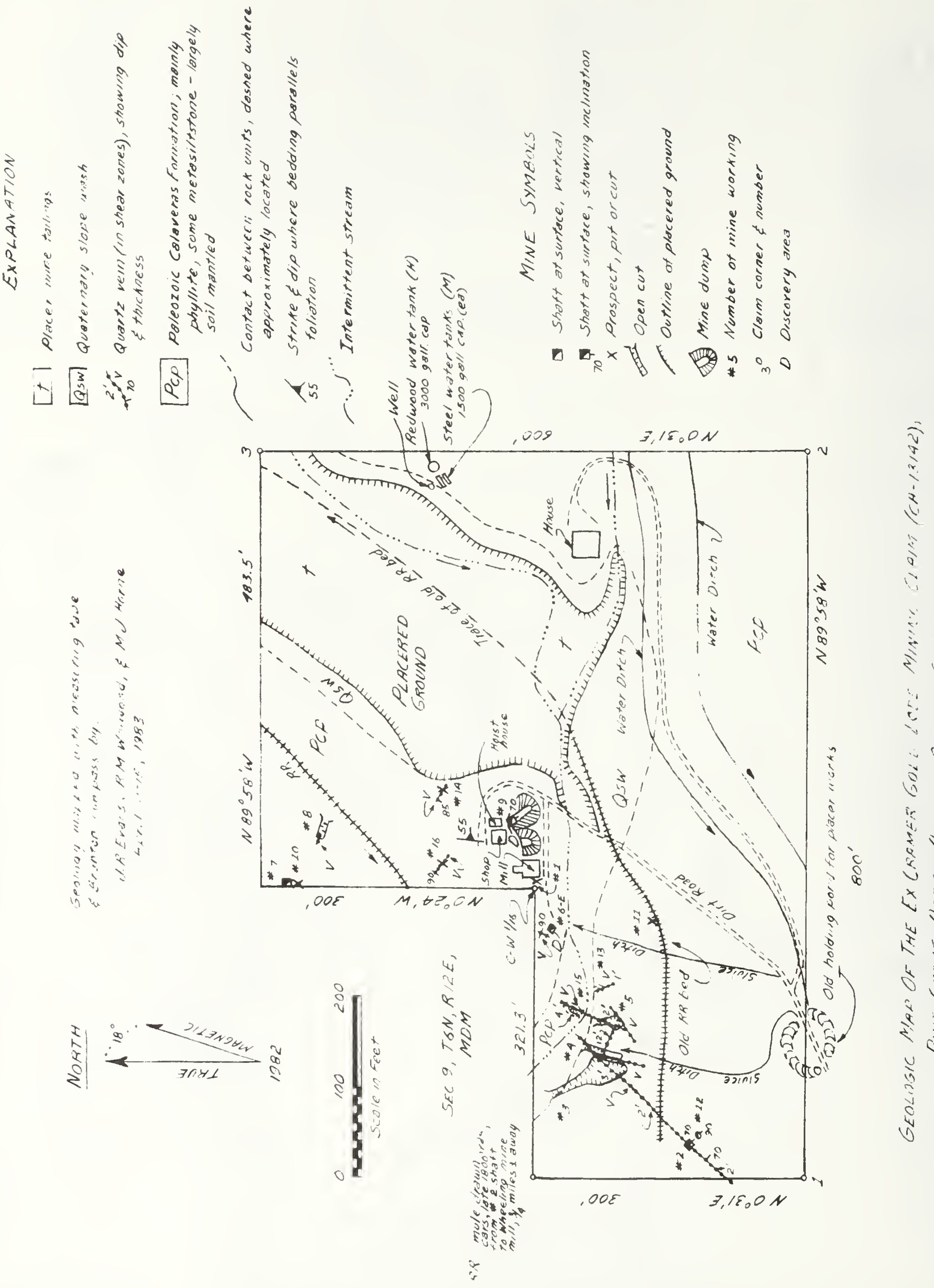
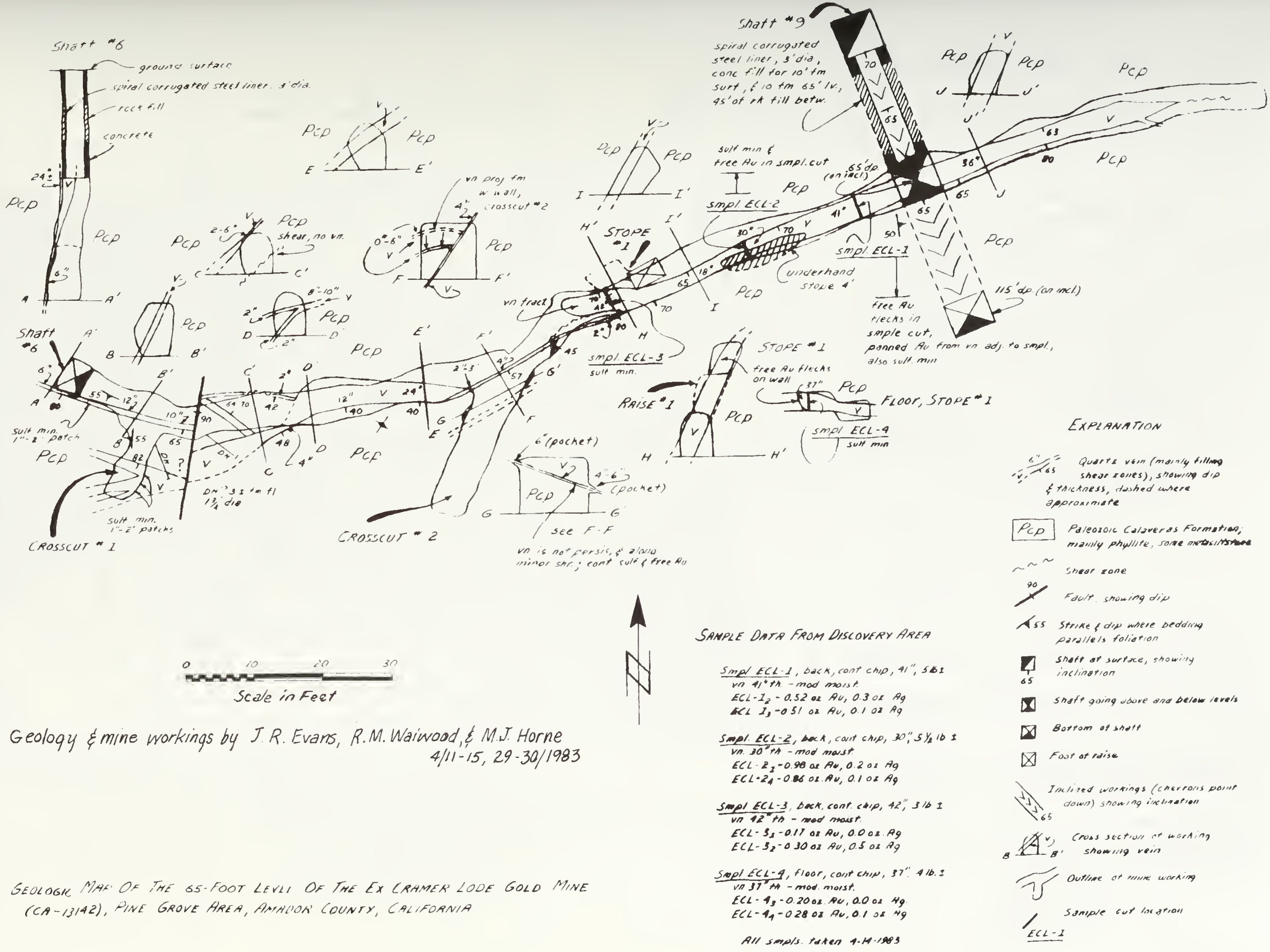
M-6 Master Title Plat (MTP) Showing Lode Mining Claim and Mill Site Mineral Surveys


MINERAL SURVEY
No. 6900
CALIFORNIA
CLAIM OF
CHARLES E. WADE, ET AL
KNOWN AS THE
GOLDEN ANNEX 8, GOLDEN ANNEX C, GOLDEN ANNEX 6, BIG CHIEF 4, GOLDEN ANNEX A, BIG CHIEF 3, BIG CHIEF 2, GOLDEN ANNEX D, GOLDEN ANNEX E, BIG CHIEF 1, DESERT VIEW 2, CALCITE 3, CHOLLA, GOLDEN ANNEX 4, GOLDEN ANNEX 5, AND DESERT VIEW 1 lodes
SITUATE IN
(Unsurveyed)
Secs 5 and 8, T. 13 S., R. 19 E., S.B.M.
IMPERIAL COUNTY
(Unknown) Mining District
California Land District
Lat. 33°03'22.8" N., Long. 114°59'54.2" W. at Cor. No. 1 of the Golden Annex 8 lode.
Feet
Magnetic Declination 13 1/2° East
Surveyed August 9 to September 12, 1983
By Earnest E. Scheff, Mineral Surveyor
Sheet 1 of 2 Sheets
6900
T.13S., R.19E., S.B.M.
(Unsurveyed)
GOLDEN ANNEX 4
NE 1/4
CHOLLA
Sec. 5
DESERT VIEW 2
GOLDEN ANNEX
CALCITE
SE 1/4
GOLDEN
ANNEX
E
TRACT GCC
NE 1/4
GOLDEN ANNEX D
TRACT GB6
TRACT GB4
NW 1/4
DESERT VIEW 1
EAST
WEST
TRACT BB1
TRACT ST1
BIG CHIEF 1
SW 1/4
BIG CHIEF 2
Portal of Tunnel
See Sheet 2 of 2 Sheets
True Meridian
N

M-7 Plat Map Showing a Mineral Survey of Lode Mining Claims on a Disseminated Gold Deposit

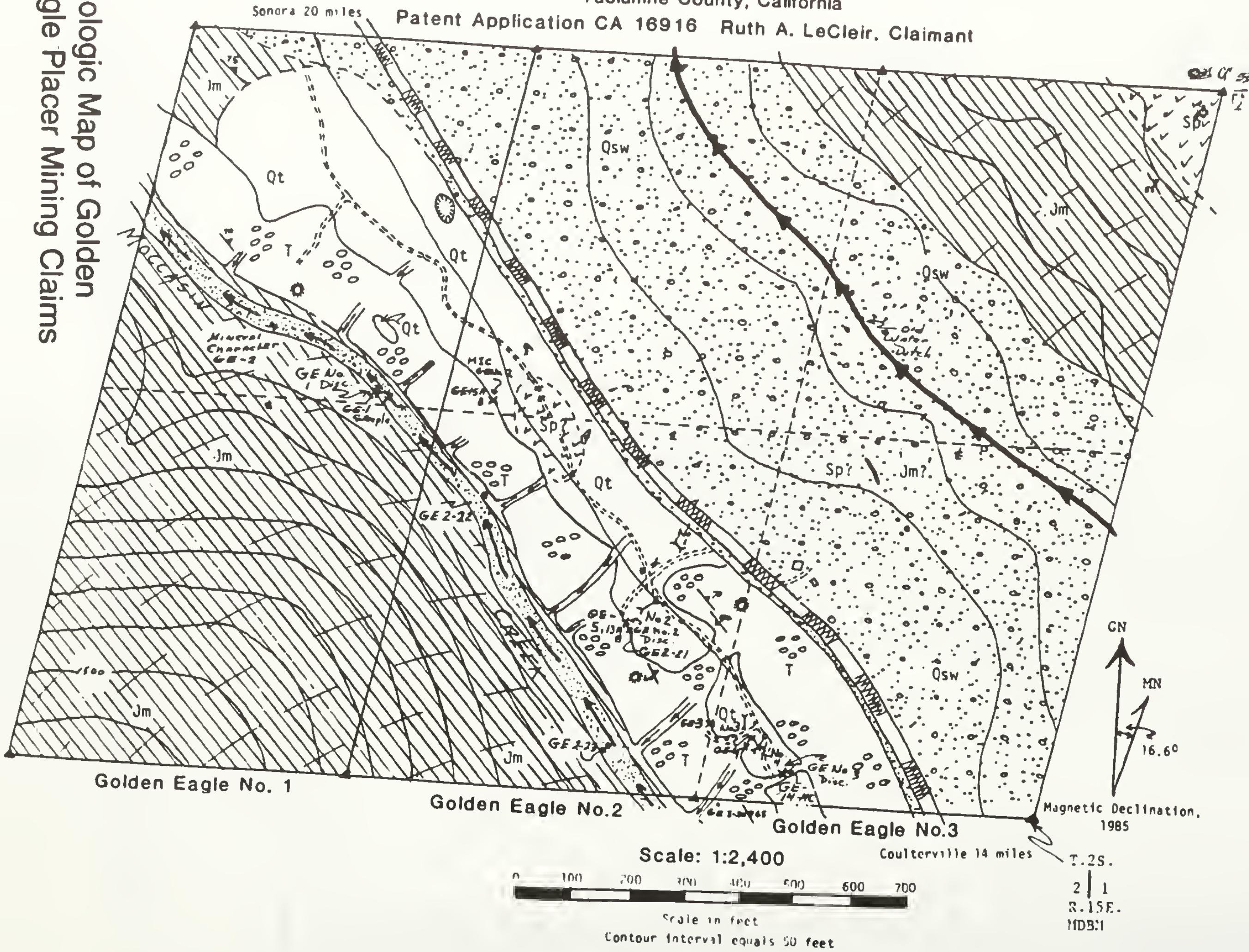

EXPLANATION
Placer mine tailings
Qsw Quaternary slope wash
Quartz vein (in shear zones), showing dip & thickness
Pcp Paleozoic Calaveras Formation; mainly phyllite, some metasiltstone - largely soil mantled
Contact between rock units, dashed where approximately located
Strike & dip where bedding parallels foliation
Intermittent stream
MINE SYMBOLS
Shaft at surface, vertical
Shaft at surface, showing inclination
Prospect, pit or cut
Open cut
Outline of placered ground
Mine dump
#5 Number of mine working
3° Claim corner & number
D Discovery area
Well
Redwood water tank (H) 3000 gall. cap
Steel water tanks (M) 1500 gall. cap. (ea)
Geology mapped with measuring tape & Brunton compass by
J.R. Evans, R.M. Winward, & M.J. Horne
July, 1983
NORTH
TRUE
MAGNETIC
18°
1982
0
100
200
Scale in Feet
SEC 9, T6N, R12E, MDM
N 89°58'W
783.5'
N 0°31'E
600'
N 89°58'W
800'
N 0°31'E
300'
321.3'
N 0°24'W
300'
PLACERED GROUND
Qsw
Pcp
Toe of old RR bed
RR
House
Water Ditch
Hoist House
Shop
Mill
Dirt Road
Ditch
Sluice
Old RR bed
Old holding pond for placer works
C-W 1/16
mule drawn ore cars, late 1800's, from #2 shaft to Wheeling mine mill, 3/4 miles ± away
GEOLOGIC MAP OF THE EX CRAMER GOLD LODE MINING CLAIM (CA-13142), PINE GROVE AREA, AMADOR COUNTY, CALIFORNIA

M-8 Geological Map of Ex Cramer Gold Lode Mining Claim


Shaft #6
ground surface
spiral corrugated steel liner, 3' dia.
rock fill
concrete
Shaft #9
spiral corrugated steel liner, 3' dia, conc fill for 10' fm surf, & 10 fm 65' lv., 45' of rk fill betw.
Pcp
CROSSCUT #1
CROSSCUT #2
STOPE #1
RAISE #1
FLOOR, STOPE #1
smpl. ECL-1
smpl. ECL-2
smpl. ECL-3
smpl ECL-4
sulf min & free Au in smpl. cut
65' dp. (on incl.)
115' dp. (on incl.)
underhand stope 4'
free Au flecks in smple cut, panned Au from vn adj. to smpl., also sulf. min
free Au flecks on wall
sulf min.
vn fract
vn proj fm w. wall, crosscut #2
shear, no vn.
6" (pocket)
4"-6" (pocket)
see F-F
vn is not persis, & along minor shr.; cont sulf & free Au
sulf min. 1"-2" patch
sulf min. 1"-2" patchs
DH 3± fm fl 1¾ dia
0 10 20 30
Scale in Feet
Geology & mine workings by J. R. Evans, R.M. Waiwood, & M.J. Horne
4/11-15, 29-30/1983
GEOLOGIC MAP OF THE 65-FOOT LEVEL OF THE EX CRAMER LODE GOLD MINE (CA-13142), PINE GROVE AREA, AMADOR COUNTY, CALIFORNIA
SAMPLE DATA FROM DISCOVERY AREA
Smpl ECL-1, back, cont chip, 41", 5 lb ±
vn 41" th. - mod moist.
ECL-1₂ - 0.52 oz Au, 0.3 oz Ag
ECL 1₃ - 0.51 oz Au, 0.1 oz Ag
Smpl. ECL-2, back, cont chip, 30", 5½ lb ±
vn. 30" th - mod moist.
ECL-2₃ - 0.98 oz Au, 0.2 oz Ag
ECL-2₄ - 0.86 oz Au, 0.1 oz Ag
Smpl ECL-3, back, cont. chip, 42", 3 lb ±
vn 42" th - mod moist.
ECL-3₁ - 0.17 oz Au, 0.0 oz Ag
ECL-3₂ - 0.30 oz Au, 0.5 oz Ag
Smpl ECL-4, floor, cont chip, 37", 4 lb ±
vn 37" th - mod. moist.
ECL-4₃ - 0.20 oz Au, 0.0 oz Ag
ECL-4₄ - 0.28 oz Au, 0.1 oz Ag
All smpls. taken 4-14-1983
EXPLANATION
Quartz vein (mainly filling shear zones), showing dip & thickness, dashed where approximate
Paleozoic Calaveras Formation; mainly phyllite, some metasiltstone
Shear zone
Fault, showing dip
Strike & dip where bedding parallels foliation
Shaft at surface, showing inclination
Shaft going above and below levels
Bottom of shaft
Foot of raise
Inclined workings (chevrons point down) showing inclination
Cross section of working showing vein
Outline of mine working
Sample cut location
ECL-1

M-9 Geological Map of 65-Foot Level, Ex Cramer Lode Gold Mine

GEOLOGIC MAP
of the
Golden Eagle Placer Mining Claims, Moccasin Creek Area
Tuolumne County, California
Patent Application CA 16916 Ruth A. LeCleir, Claimant



EXPLANATION

Geologic Units

Cenozoic — Quaternary

Qal	Recent alluvial gravels consisting of clean sands, cobbles, and boulders within active streambeds: locally auriferous.
Qsw	Recent slope wash. Angular to subangular cobbles and boulders in a clay to sand matrix.
Qt	Recent river terrace gravels consisting of subangular-rounded boulders and cobbles interlayered with clay, sand, and gravel lenses on slate bedrock. Locally auriferous.

Mesozoic

Sp	Cretaceous (Evans, 1977) serpentinite, locally intrusive along slate bedding. Chrysotile asbestos veinlets, 0.04-0.75 inches wide are present, locally.
Jm	Upper Jurrasic Mariposa Formation. Locally hard fissile slates, brown to grey-green in color; foliation generally parallel with bedding. Some local quartz veins are gold bearing.

Geologic Symbols

Contact between geologic units; dashed where approximate; dotted where inferred.

Strike and dip of foliation; subparallel to bedding where measured.

Fault. Dashed where approximate; dotted where inferred.

Mineral Development/Surface Improvements

T — Worked placer tailings; consists of boulder and gravel piles on Mariposa slates.

Backhoe trench

Drainage ditch

Water drainage channel for old placer mining operations.

Shaft; adit

Old placer workings.

Hydraulic gun station

Earthwork dam

Dirt access road

Shed; trailer

Claim corner post (4" PVC pipe, 5' above the ground); line shows claim boundary.

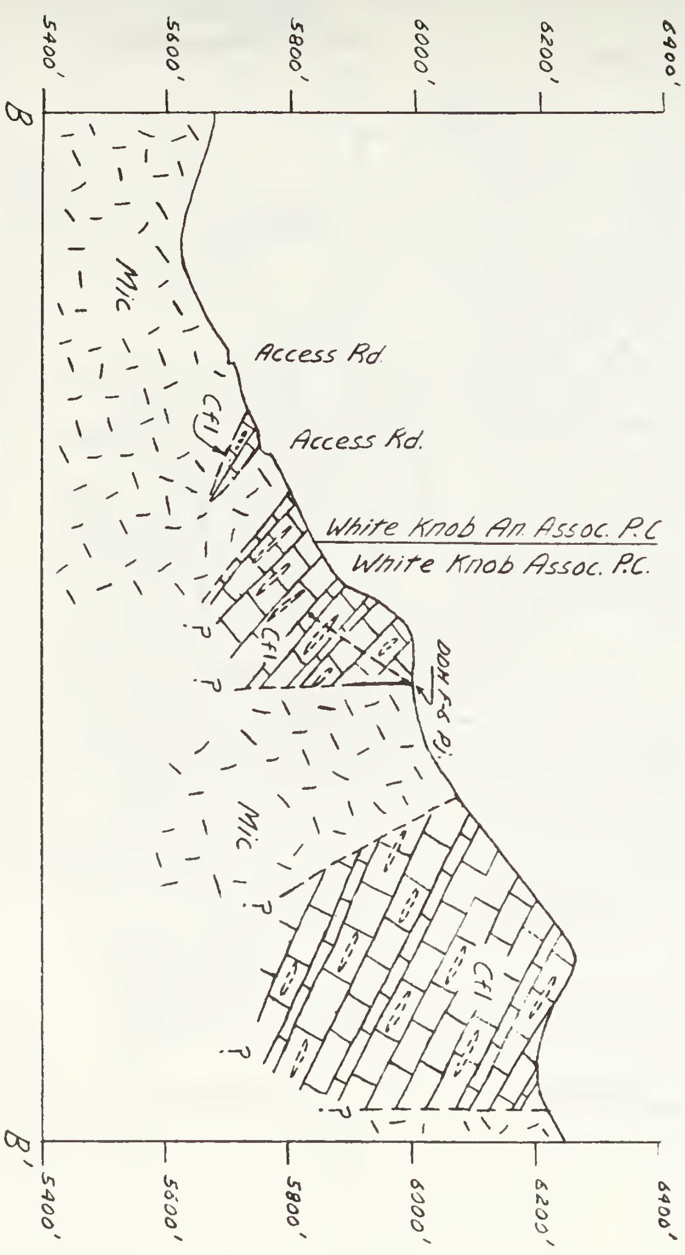
Centerline of claim for 10 acre mineral in character.

×GE Sample site designation and number.

Base map compiled from survey data provided by the applicant, USGS Moccasin quadrangle 7 1/2' map, and stadia survey performed by Bakersfield District during the period May 20-24, 1985. Geologic & mineral development data compiled from field investigation performed during the same period. All survey data tied to the quarter corner sections 1 and 2. Survey data adjusted to close on claim corner monuments.

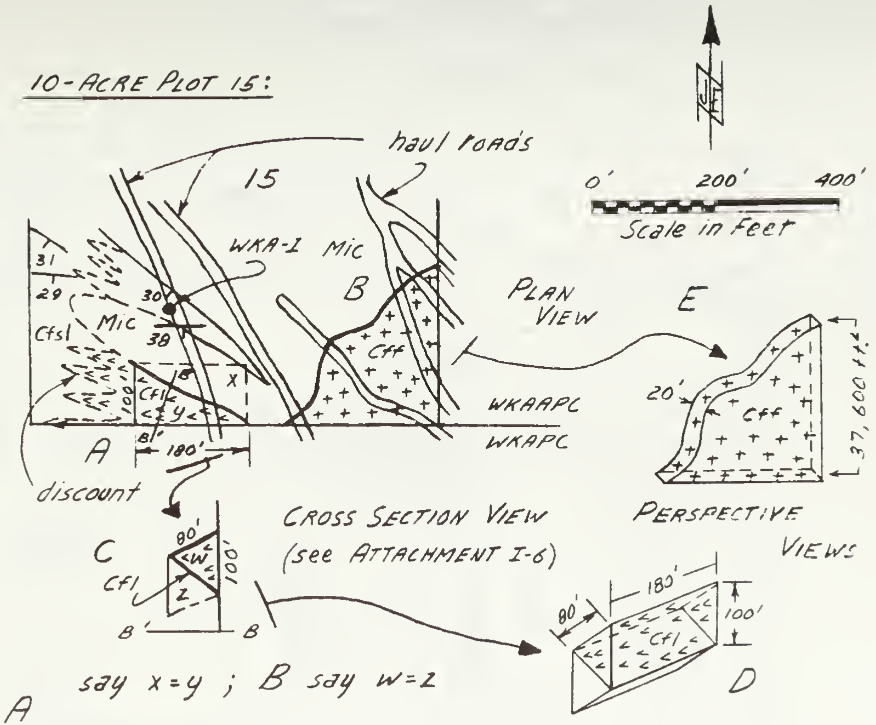
Geologic map by R. Waiwood, L. Vredenburgh, M. Horne, M. Ziegenbein, & J. Evans, May 20-24, 1985.

M-10 Geologic Map of Golden Eagle Placer Mining Claims



M-11 Geologic Section and 10-Acre Plot 15, White Knob Limestone Deposit

10-ACRE PLOT 15:



say x=y ; B say w=z

A

∴ 80' X 100' X 180' ÷ 2 = 720,000 ft.³

It has been determined that 1 ton of carbonate rock occupies 12.3 ft³ - see ATTACHMENT III-5₂.

∴ 720,000 ft³ ÷ 12.3 ft.³/ton = 58,537 tons

Discount 20% for possible error in projection, and alteration zones around margins of block.

∴ 58,537 tons X 0.80 = 46,830 tons ; say 47,000 tons in block A

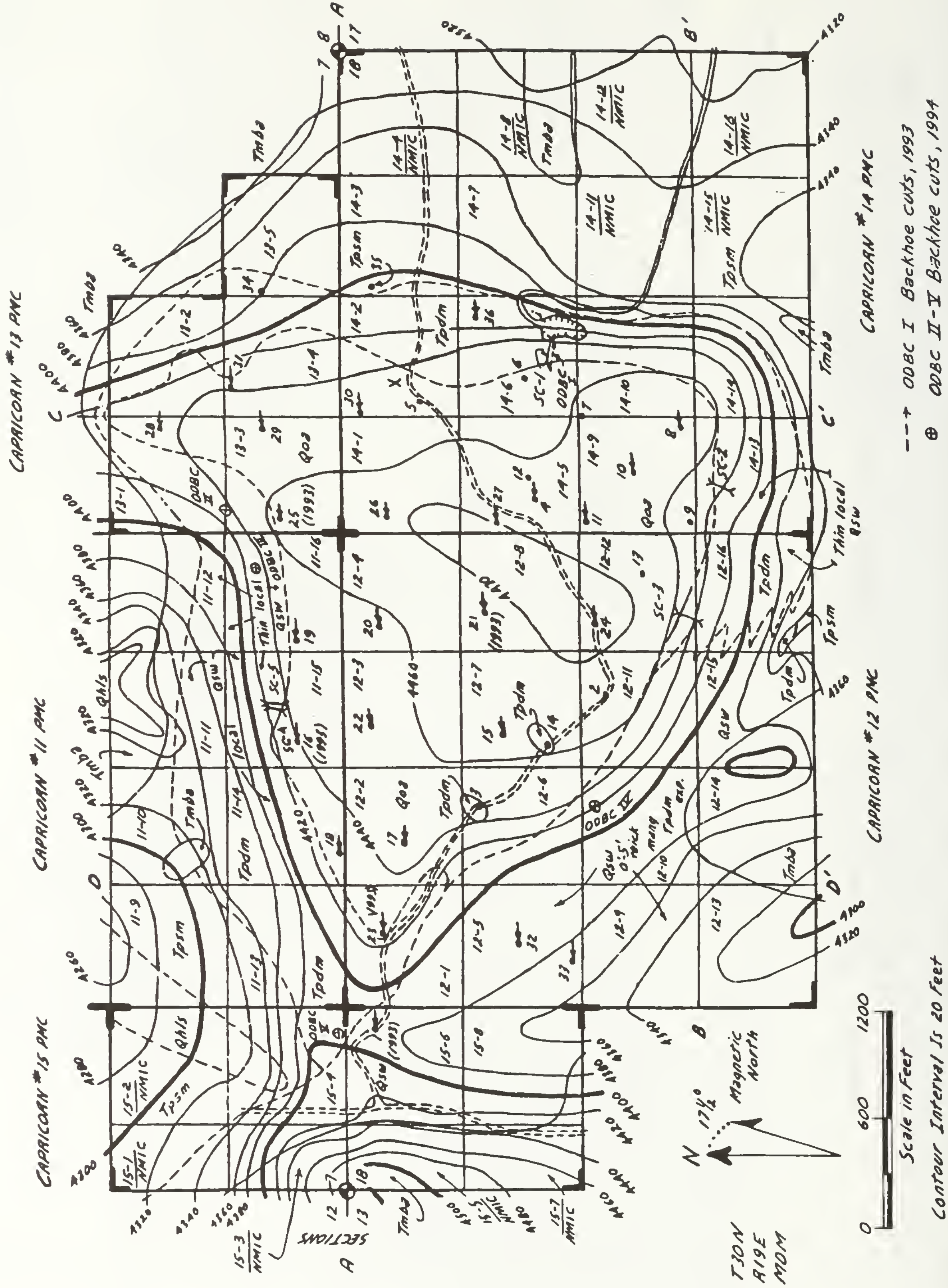
B There are 37,600 ft.² on surface of block ; assume block is 20' in average thickness -

∴ 20' X 37,600' = 752,000 ft.³ & 752,000 ft.³ ÷ 12.3 ft.³/ton = 61,138 tons Discount 20% for soil, weathered rock & Mic frag

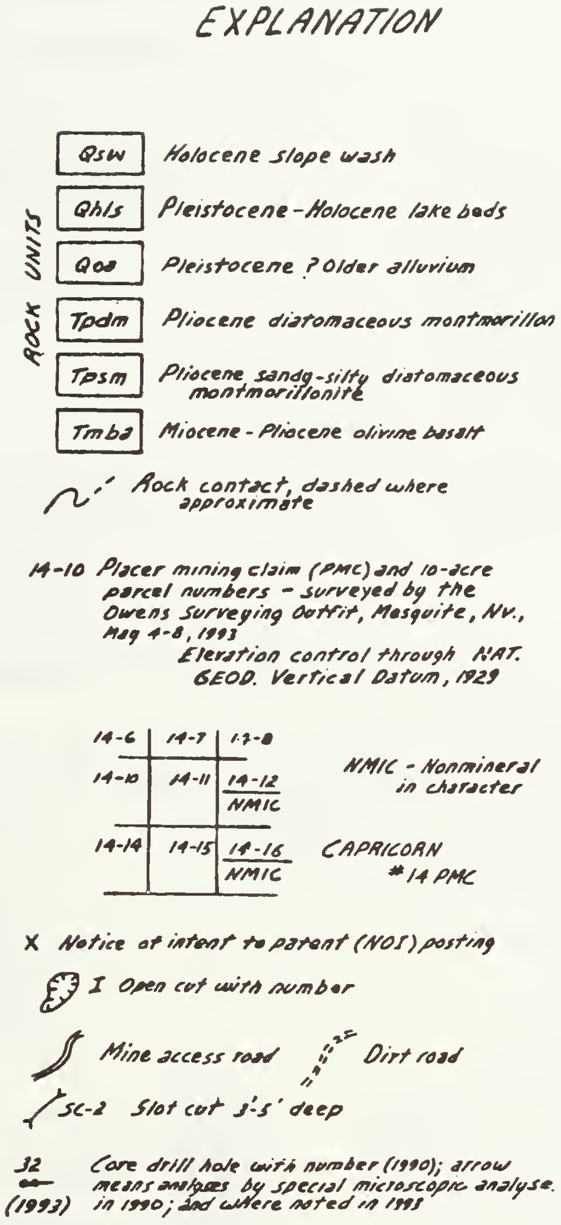
∴ 61,138 tons X 0.80 = 48,910 tons ; say 49,000 tons in block B

A + B = 47,000 tons + 49,000 tons = 96.000 tons of usable limestone in 10-acre plot 15.

J.R. Evans
1983



M-12A Geologic Map of the Capricorn Fuller's Earth Deposit (Washoe County, Nevada)



EXPLANATION

ROCK UNITS

Qsw	Holocene slope wash
Qhls	Pleistocene-Holocene lake beds
Qoa	Pleistocene ? Older alluvium
Tpdm	Pliocene diatomaceous montmorillon
Tpsm	Pliocene sandy-silty diatomaceous montmorillonite
Tmba	Miocene-Pliocene olivine basalt

Rock contact, dashed where approximate

14-10 Placer mining claim (PMC) and 10-acre parcel numbers - surveyed by the Owens Surveying Outfit, Mesquite, Nv., May 4-8, 1993

Elevation control through NAT. GEOD. Vertical Datum, 1929

14-6	14-7	1.?-8
14-10	14-11	14-12 NMIC
14-14	14-15	14-16 NMIC

NMIC - Nonmineral in character

CAPRICORN #14 PMC

X Notice of intent to patent (NOI) posting

I Open cut with number

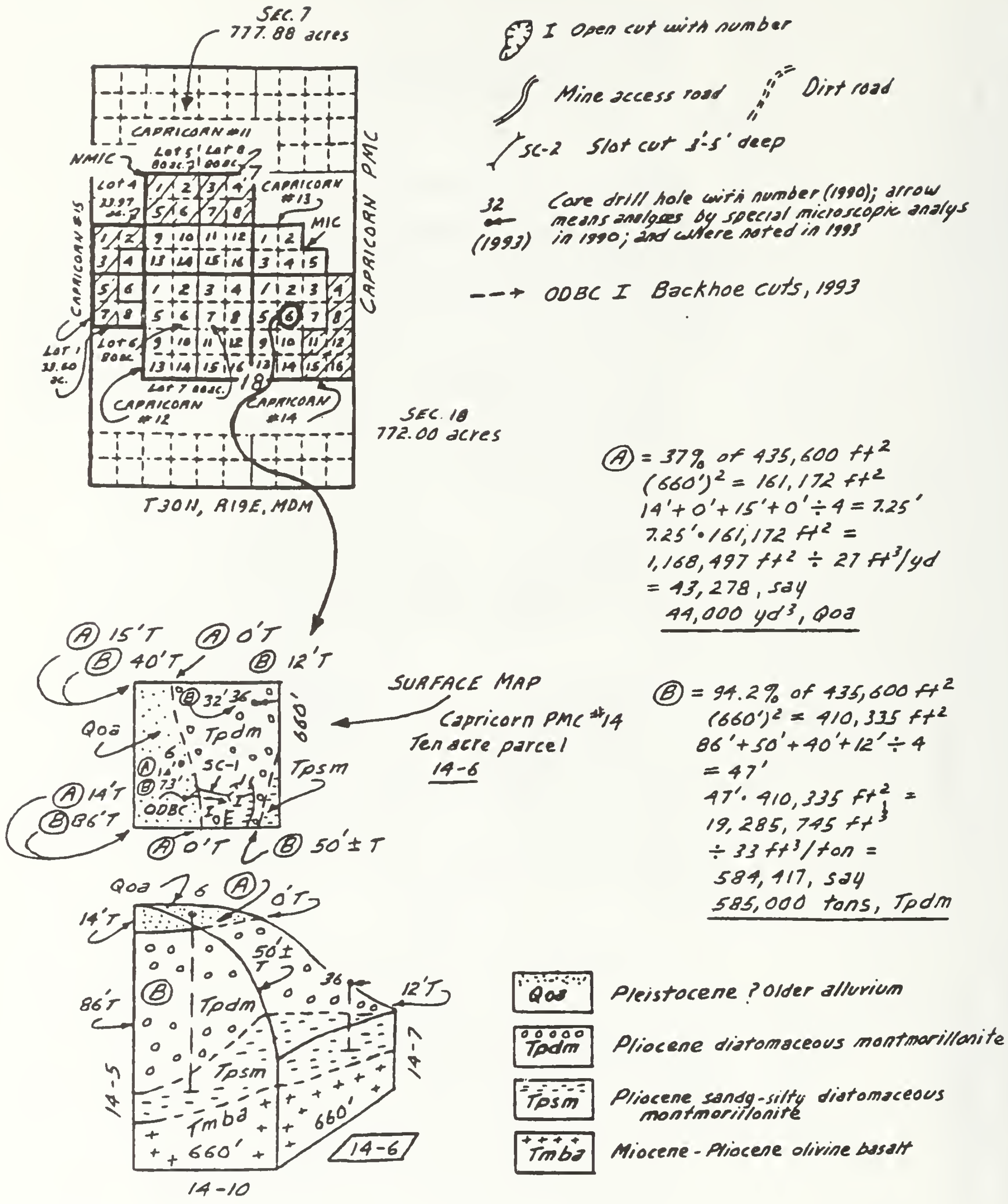
Mine access road

Dirt road

SC-2 Slot cut 3'-5' deep

32 (1993) Core drill hole with number (1990); arrow means analyses by special microscopic analyse. in 1990; and where noted in 1993

M-12A (cont'd) Explanation -
Geologic Map of the Capricorn Fuller's Earth Deposit



Ⓐ = 37% of 435,600 ft²
(660')² = 161,172 ft²
14' + 0' + 15' + 0' ÷ 4 = 7.25'
7.25' • 161,172 ft² =
1,168,497 ft² ÷ 27 ft³/yd
= 43,278, say
44,000 yd³, Qoa

Ⓑ = 94.2% of 435,600 ft²
(660')² = 410,335 ft²
86' + 50' + 40' + 12' ÷ 4
= 47'
47' • 410,335 ft² =
19,285,745 ft³
÷ 33 ft³/ton =
584,417, say
585,000 tons, Tpdm

M-12B Example of Isometric Block and Surface Geologic Map Used to Determine Tons of Overburden and Valuable Mineral by 10-acre Parcel on the Capricorn Fuller's Earth Deposit (Evans, 1997)

FORMS

A 3800-04
ev. 8/97
. 1

U.S. Dept. of the Interior/Bureau of Land Management

ECORDING REQUESTED BY:
(Mail recording to:)

ame ______________________

ddress ______________________

____

FOR RECORDER'S USE

LODE MINING CLAIM LOCATION NOTICE (CALIFORNIA)

o whom it may concern, please take notice that:

. Lode mining claim name is ______________________.

.Date of location (date a proper and legal discovery monument was erected and ocation notice posted in or on it) of the lode mining claim is ______________.
(month) (day) (year)

. Description of the discovery monument is as follows: ______________________

______________________.

. Lode mining claim is located in the following quarter-section(s), section(s), township(s), range(s), and meridian:

NE1/4☐ NW1/4☐ SW1/4☐ SE1/4☐ Sec.____ T.____ R.____ Mer.________
NE1/4☐ NW1/4☐ SW1/4☐ SE1/4☐ Sec.____ T.____ R.____ Mer.________
NE1/4☐ NW1/4☐ SW1/4☐ SE1/4☐ Sec.____ T.____ R.____ Mer.________
NE1/4☐ NW1/4☐ SW1/4☐ SE1/4☐ Sec.____ T.____ R.____ Mer.________

. The discovery site as described by reference to some natural object or permanent monument so that the site can be readily found on the ground is as follows:

____

____

______________________.

. The number of linear feet claimed in length (not to exceed 1,500 feet) along the course of the vein (or lode, ledge, tabular deposit or zone), and the number of feet in length each way from the point of discovery; with the width of the claim (not to exceed 300 feet) on each side of the center of the claim is:

____

____

______________________.

M-1 Lode Mining Claim Location Notice (California)

7. The general course of the vein (lode, ledge, tabular deposit or zone) is by compass direction____________________________

____

8A. The undersigned locator(s) within 60 days after the date of location (see No. have defined the boundaries of the claim by erecting at each corner of the claim, or nearest accessible points thereto, a proper and legal monument, and each corner monument so erected bears or contains a copy of this form.

8B. The date of monument erection and marking is______________________
(month) (day) (year)

8C. Description of each monument is as follows______________________

____

____

9. Attach to this Notice an appropriate U.S. Geological Survey topographic map showing a sketch of the outline of the lode mining claim.

10. Lode mining claim is in________________________County.

11. Locator(s) of this lode mining claim are: (Please Print)

Name(s)	Current Mailing or Residence Address

12. Signatures of locator(s):

	Date		Date
	Date		Date
	Date		Date
	Date		Date

FILE THIS ORIGINAL NOTICE WITH THE APPROPRIATE COUNTY RECORDER (within 90 days of the date of location), AND FILE A DUPLICATE NOTICE (within the same 90 days) with the Bureau of Land Management, California State Office, 2800 Cottage Way Rm W1834, Sacramento, California 95825.

FM-1 Lode Mining Claim Location Notice (page 2)

3800-01 U.S. Dept. of the Interior/Bureau of Land Management
v. 8/97
1

ECORDING REQUESTED BY:
ail recording to:)

me____________________________

dress____________________________

____

FOR RECORDER'S USE

PLACER MINING CLAIM LOCATION NOTICE (CALIFORNIA)

whom it may concern, please take notice that:

. Placer mining claim name is ____ .

Date of location (date the proper location monument was erected and location notice posted in or on it) of this placer mining claim is ____________________ .
(month) (day) (year)

. Description of the discovery monument is as follows: ____________________________

____ .

. Placer mining claim IS IN an area where there is a U.S. Public Land Survey and the description of the claim by legal subdivision including aliquot part (A.P.) of section (such as E1/2NE1/4NE1/4), Section (Sec.), Township (T.), Range (R.) and Meridian (Mer.),is as follows:

A.P. ______________ , Sec. ______ , T. ____ , R. ____ , Mer. ______________
A.P. ______________ , Sec. ______ , T. ____ , R. ____ , Mer. ______________
A.P. ______________ , Sec. ______ , T. ____ , R. ____ , Mer. ______________
A.P. ______________ , Sec. ______ , T. ____ , R. ____ , Mer. ______________

. Placer mining claim IS NOT IN an area where there is a U.S. Public Land Survey, is marked by conspicuous and substantial monument at each claim corner, and is located by properly marked boundaries described below in reference to some natural object:

Natural object is (description)______________________________ , and it is by compass direction__________ , about_________ feet to the discovery monument. From the discovery monument it is by compass direction__________ , about_________ feet to the NW corner post; from here it is by compass direction__________ , about_________ feet to the NE corner post; from here it is by compass direction__________ , about_________ feet to the SE corner post; from here it is by compass direction__________ , about_________ feet to the SW corner post; from here it is by compass direction__________ , about _________ feet to the NW corner post.

FM-2 Placer Mining Claim Location Notice (California)

CA 3800-01
Rev. 8/97
p. 2

6A. The undersigned locator(s) have defined the boundaries of the claim by erecting at each corner of the claim, or nearest accessible points thereto, a proper monument and each corner monument so erected bears or contains markings sufficient to appropriately designate the corner of the claim and the name of the claim.

6B. The date of monument erection and marking is ______________________
(month) (day) (year)

6C. Description of each monument is as follows ______________________

____

____

7. Attach to this Notice an appropriate U.S. Geologic Survey topographic map showing a sketch of the outline of the placer mining claim.

8. Placer mining claim is in ______________________ County.

9. Placer mining claim contain(s) ______________________ acres.

10. If your placer mining claim is in a powersite withdrawal as determined from BLM Master Title Plat records, write "Filed under P.L. 359" on this line ______________________

____

11. Locator(s) of this placer claim are: (Please Print)

Name(s)	Current Mailing or Residence Address
______________________	______________________
______________________	______________________
______________________	______________________
______________________	______________________

12. Signatures of locator(s):

______________________	Date__________	______________________	Date__________
______________________	Date__________	______________________	Date__________
______________________	Date__________	______________________	Date__________
______________________	Date__________	______________________	Date__________

FILE THIS ORIGINAL NOTICE WITH THE APPROPRIATE COUNTY RECORDER (within 90 days of the date location), AND FILE A DUPLICATE NOTICE (within the same 90 days) with the Bureau of Land Management, California State Office, 2800 Cottage Way Rm W1834, Sacramento, California 9582

FM-2 Placer Mining Claim Location Notice (page 2)

A 3800-03 U.S. Dept. of the Interior/Bureau of Land Management
ev. 8/97
. 1

ECORDING REQUESTED BY:
Mail recording to:)

ame________________________________

ddress______________________________

____

FOR RECORDER'S USE

MILL SITE LOCATION NOTICE (CALIFORNIA)

o whom it may concern, please take notice that:

. Mill site name is____.

. Date of location (date a proper and legal location monument was erected and location notice posted in or on it) of this mill site is____________________________.
(month) (day) (year)

. Description of the discovery monument is as follows:______________________________
____.

. Mill Site IS IN an area where there is a U.S. Public Land Survey and the description of the claim by legal subdivision including aliquot part (A.P.) of section (such as E1/2NE1/4NE1/4), Section (Sec.), Township (T.), Range (R.) and Meridian (Mer.),is as follows:

A.P. ________________ , Sec. ______ , T. ____ , R. ____ , Mer. ________________

A.P. ________________ , Sec. ______ , T. ____ , R. ____ , Mer. ________________

A.P. ________________ , Sec. ______ , T. ____ , R. ____ , Mer. ________________

A.P. ________________ , Sec. ______ , T. ____ , R. ____ , Mer. ________________

. Mill site IS NOT IN an area where there is a U.S. Public Land Survey, is marked by conspicuous and substantial monument at each claim corner, and is located by properly marked boundaries described below in reference to some natural object:

Natural object is (description)_____________________________________ , and it is by compass direction___________ , about_________ feet to the discovery monument. From the discovery monument it is by compass direction___________ , about_________ feet to the NW corner post; from here it is by compass direction___________ , about_________ feet to the NE corner post; from here it is by compass direction___________ , about_________ feet to the SE corner post; from here it is by compass direction___________ , about_________ feet to the SW corner post; from here it is by compass direction___________ , about _________ feet to the NW corner post.

. Description of each monument is as follows:____________________________________
____
____

CA 3800-03
Rev. 8/97
p. 2

7. Attach to this Notice an appropriate U.S. Geologic Survey topographic map showing a sketch of the outline of the mill site.

8. Mill site is in____________________ County.

9. Mill site contain(s)____________________ acres.

10. Mill site is:
☐ Independent
☐ Used in connection with placer claim(s).
☐ Used in connection with lode claim(s).

11. Locator(s) of this mill site are: (Please Print)

Name(s)	Current Mailing or Residence Address

12. Signatures of locator(s):

____________________Date________ ____________________Date________
____________________Date________ ____________________Date________
____________________Date________ ____________________Date________
____________________Date________ ____________________Date________

FILE THIS ORIGINAL NOTICE WITH THE APPROPRIATE COUNTY RECORDER (within 90 days of the date o location), AND FILE A DUPLICATE NOTICE (within the same 90 days) with the Bureau of Land Management, California State Office, 2800 Cottage Way, Rm W1834, Sacramento, California 95825.

FM-3 Mill Site Location Notice (page 2)

A 3800-05 U.S. Dept. of the Interior/Bureau of Land Management
ev. 8/97
. 1

ECORDING REQUESTED BY:
Mail recording to:)

ame________________________________

ddress______________________________

____

FOR RECORDER'S USE

TUNNEL SITE LOCATION NOTICE (CALIFORNIA)

o whom it may concern, please take notice that:

. Tunnel site name is____ .

. Date of location (date a proper and legal location monument was erected at the tunnel face and location notice posted in or on it) of the tunnel site is

____
(month) (day) (year)

. Description of the discovery monument is as follows:____________________

____

. Tunnel site is located in the following quarter-section(s), section(s), township(s), range(s), and meridian:

E1/4☐	NW1/4☐	SW1/4☐	SE1/4☐	Sec.____	T.____	R.____	Mer.________
E1/4☐	NW1/4☐	SW1/4☐	SE1/4☐	Sec.____	T.____	R.____	Mer.________
E1/4☐	NW1/4☐	SW1/4☐	SE1/4☐	Sec.____	T.____	R.____	Mer.________
E1/4☐	NW1/4☐	SW1/4☐	SE1/4☐	Sec.____	T.____	R.____	Mer.________

. Position of the tunnel face by reference to some natural object or permanent monument so as to identify its location:

____

____

____

. Tunnel site is in____County.

Actual or proposed course or direction of the tunnel is:__________________ .
(compass direction)

Tunnel height is______________feet, and width is__________________feet.

FM-4 Tunnel Site Location Notice (California)

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Rev. 8/97
p. 2

9A. The undersigned locator(s) have established the line (compass direction) of the tunnel by proper and legal monuments placed along the line on-the-ground surfac at intervals of not more than 600 feet from the face or point of commencement o the tunnel to its terminus 3,000 feet therefrom.

9B. The date of monument erections and marking is ______________________________
(month) (day) year)

9C. Description of each monument is as follows: ______________________________

____

____

10. Attach to this Notice an appropriate U.S. Geological Survey topographic map showing the location and course or direction of the tunnel.

11. Locator(s) of this tunnel site are: (Please Print)

Name(s)	Current Mailing or Residence Address

12. Signatures of locator(s):

______________________ Date __________ ______________________ Date __________

______________________ Date __________ ______________________ Date __________

______________________ Date __________ ______________________ Date __________

______________________ Date __________ ______________________ Date __________

FILE THIS ORIGINAL NOTICE WITH THE APPROPRIATE COUNTY RECORDER (within 90 days of the date of location), AND FILE A DUPLICATE NOTICE (within the same 90 days) with the Bureau of Land Management, California State Office, 2800 Cottage Way Rm W1834, Sacramento, California 95825.

FM-4 Tunnel Site Location Notice (page 2)

MAINTENANCE (RENTAL) FEE PAYMENT FORM

USDI, Bureau of Land Management
2800 Cottage Way, Rm W-1834, Sacramento, CA 95825

The Mining Claim Maintenance (Rental) Fees of $100 per claim or site may be paid by cash, check, money order, or credit card (VISA or MasterCard). Payments should be mailed to the Bureau of Land Management, 2800 Cottage Way, Rm.W-1834, Sacramento, CA 95825. Allow sufficient mailing time so that your payment will be received in our office by the due date of September 1, 1999. If you wish to pay by telephone using your credit card, please call BLM at (916) 978-4400, (916) 978-4404, or (916) 978-4360. If paying by phone, please have all information that will be requested in order before you place your call.

CLAIMANT NAME: ______________________________
ADDRESS: ______________________________
____

Claim Name(s)	**CAMC Numbers**

Additional claims & CAMC #s can be listed on a separate page.

IF USING A CREDIT CARD COMPLETE THE FOLLOWING:

Number of Claims _____X $100 = $_______ as maintenance fee payment for 2000.

EXACT NAME: ______________________________

Amount Paid: $________________ Circle one: VISA MASTERCARD

CREDIT CARD NUMBER: _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _

Expiration Date: ________________ **Telephone:** ( )________________

Signature: ______________________________

Title 18 USC Section 1001, makes it a crime for any person knowingly and willfully providing any department or agency of the United States any false, fictitious or fraudulent statement or representation as to any matter within its jurisdiction.

☆ U.S. GOVERNMENT PRINTING OFFICE: 1999-783-036/24025

Form 3830-2
(formerly 3830-1)
(July 1994)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

FORM APPROVED
OMB NO. 1004-0114
Expires: March 31, 1997

MAINTENANCE FEE PAYMENT WAIVER CERTIFICATION

This small miner waiver is filed to hold the claims/sites listed below for the assessment year beginning at noon on the first September 1 following the official filing of this form with BLM.

The undersigned owner(s) of the mining claims/sites listed below hereby certify under penalty of 18 U.S.C. 1001 and 43 U.S.C. 1212 that:

I/We control, or will control, ten or fewer mining claims/sites located and maintained on Federal land in the United States of America on the August 31 that is one day before the beginning of the assessment year indicated in line one above.

I/We have/will performed/perform assessment work upon the claims listed below for the current assessment year as of the August 31 indicated in line three above. This work meets the requirements of the General Mining Law of 1872, *as amended;* the Act of August 10, 1993; and the regulations at 43 CFR 3833 and 3850. Such work will be described on our affidavit of labor. Listing a site on this form constitutes a filing of a Notice of Intention to Hold for that site.

☐ **Please check this box if the following statement applies to you.**
I/We relinquish my/our claims and/or sites not listed below.

The mining claims and sites for which the above waiver from payment of the maintenance fees is made are:

CLAIM NAME	BLM RECORDATION SERIAL NUMBER
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

All owner(s) of the above mining claims and sites are filing for this waiver.

I/We understand and acknowledge that pursuant to 43 U.S.C. 1212 and 18 U.S.C. 1001, the filing of a false, fictitious, or fraudulent document with the Bureau of Land Management may result in a fine of up to $10,000, a prison term not to exceed five years, or both.

(Owner's Name - Please Print) (Owner's Signature)

(Street or P.O. Box) (City) (State) (Zip Code)

(Owner's Name - Please Print) (Owner's Signature)

(Street or P.O. Box) (City) (State) (Zip Code)

(Owner's Name - Please Print) (Owner's Signature)

(Street or P.O. Box) (City) (State) (Zip Code)

(Owner's Name - Please Print) (Owner's Signature)

(Street or P.O. Box) (City) (State) (Zip Code)

(Continued on reverse)

M-6 Maintenance Fee Waiver Certification

(Owner's Name - Please Print) (Owner's Signature)

(Street or P.O. Box) (City) (State) (Zip Code)

(Owner's Name - Please Print) (Owner's Signature)

(Street or P.O. Box) (City) (State) (Zip Code)

(Owner's Name - Please Print) (Owner's Signature)

(Street or P.O. Box) (City) (State) (Zip Code)

(Owner's Name - Please Print) (Owner's Signature)

(Street or P.O. Box) (City) (State) (Zip Code)

INSTRUCTIONS

1. This certification of waiver from payment of maintenance fees is made under the provisions of the Act of August 10, 1993 (107 Stat. 312 [1993]), and §1744 of Title 43 and §28-28k of Title 30 of the United States Code; and the regulations thereunder (43 CFR 3833 and 3850).
2. This waiver must be filed in advance of the assessment year for which a waiver is sought, but in no event be filed later than the August 31st preceding the assessment year for which the waiver is sought.
3. You **must** still record your affidavit of assessment work for claims listed and/or Notices of Intention to Hold for any sites listed with the BLM by each December 30th, and the local recording office under State law, as in the past.
4. This waiver must be filed in the BLM State Office where the mining claims are recorded.
5. If the claims and sites are located in more than one State, a separate waiver form **must** be filed in each State in which they are held. The total number of claims and sites listed on separate waiver forms cannot exceed ten.
6. All claim names and Bureau of Land Management (BLM) serial numbers **must** be listed for all mining claims and sites for which a waiver is sought.
7. All owners and their addresses **must** be listed.
8. This waiver form **must** be signed by all of the owners or their designated agent. If an agent is designated, a statement appointing the agent, signed by all of the owners, **must** be submitted with this certification, if a designation of agent is not currently on file with the BLM State office where your claims and sites are recorded.
9. Mining claims and sites held by a husband and wife, either jointly or individually, or their children under the age of discretion, shall be counted towards the 10 claim limit. Mining claims and sites held in co-ownership, or by an association of locators, by a partnership, or by a corporation shall be counted towards the 10 claim limit for claimants that have an interest in these entities.
10. Failure to pay the maintenance fee or meet the requirements for waiver from payment of the maintenance fee by any August 31st deadline for the following assessment year shall cause the mining claims and sites to be declared null and void.

NOTICE

The Privacy Act of 1974 and the regulation in 43 CFR 2.48(d) provide that you be furnished the following information in connection with the information required by this certification of exemption from rental fees form.

AUTHORITY: 30 U.S.C. 28-28e; 43 U.S.C. 1201, 1740, and 1744; and the Act of August 10, 1993 (107 Stat. 312); 43 CFR 3833 and 3850.

PRINCIPLE PURPOSE: This information is to be used to verify that the owner(s) of a mining claim has complied with the Act of August 10, 1993 (107 Stat. 312), and is entitled to perform assessment work in lieu of paying the maintenance fee for the mining claims listed on this form.

ROUTINE USE: (1) Adjudication of the claimant(s) certification of waiver from paying the maintenance fee otherwise required by the Act of August 10, 1993 (107 Stat. 312). (2) Disclosure may be made to appropriate Federal agencies when location is made within the agency's geographic area of responsibility. (3) Information from the record and/or the record will be transferred to the appropriate Federal, State, or local agency, or a member of the public in response to a specific request for pertinent information. (4) Information may also be provided to the Department of Justice or in a proceeding before a court or adjudicative body; or to Federal, State, local or foreign agencies when needed for enforcement of civil or criminal codes or applicable regulations concerning title rights upon the public land.

EFFECT OF NOT PROVIDING INFORMATION: Disclosure of this information is required by the Act of August 10, 1993 (107 Stat. 312) and 43 CFR 3833 for those owner(s) wishing to take the small miners waiver allowed under 43 CFR 3833 and 3850. Failure to supply the information required in this form to support the owner(s) certification of waiver from payment of the otherwise required maintenance fees will result in the waiver being disallowed and the mining claims declared null and void by the Bureau of Land Management (BLM).

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.) requires us to tell you that:

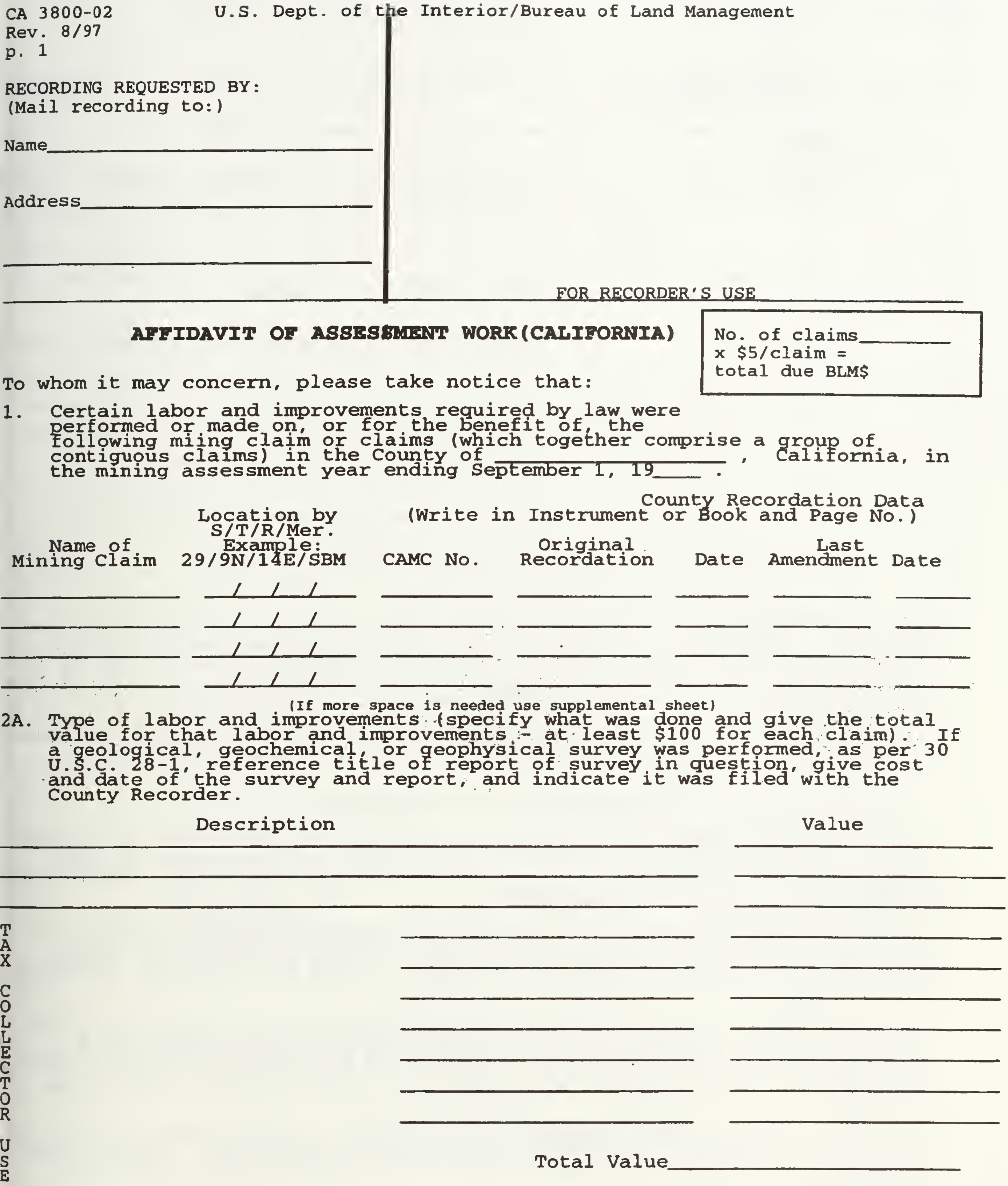
This information is being collected to allow the BLM to determine if you qualify for a waiver from the payment of $100 per mining claim maintenance fee established by the Act of August 10, 1993 (107 Stat. 312) and the implementing regulations at 43 CFR 3833 and 3850. A response to this request is required in accordance with the statute (107 Stat. 312) to retain your benefit.

BURDEN HOURS STATEMENT

Public reporting burden for this form is estimated to average 5 minutes per response, including time to review instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding this burden estimate, or any other aspect of this form, to the Department of the Interior, Bureau of Land Management, Information Collection Clearance Officer (871), 1849 C Street, N.W., Washington, D.C. 20240; and the Office of Management and Budget, Paperwork Reduction Project (1004-0114), Washington, D.C. 20503.

FOR OFFICIAL USE ONLY

FM-6 Maintenance Fee Waiver Certification (page 2)



CA 3800-02
Rev. 8/97
p. 1

U.S. Dept. of the Interior/Bureau of Land Management

RECORDING REQUESTED BY:
(Mail recording to:)

Name________________________

Address________________________

____

FOR RECORDER'S USE

AFFIDAVIT OF ASSESSMENT WORK (CALIFORNIA)

No. of claims________
x $5/claim =
total due BLM$

To whom it may concern, please take notice that:

1. Certain labor and improvements required by law were performed or made on, or for the benefit of, the following miing claim or claims (which together comprise a group of contiguous claims) in the County of ________________ , California, in the mining assessment year ending September 1, 19____ .

Name of Mining Claim	Location by S/T/R/Mer. Example: 29/9N/14E/SBM	CAMC No.	County Recordation Data (Write in Instrument or Book and Page No.) Original Recordation	Date	Last Amendment	Date
	/ / /					
	/ / /					
	/ / /					
	/ / /					

(If more space is needed use supplemental sheet)

2A. Type of labor and improvements (specify what was done and give the total value for that labor and improvements - at least $100 for each claim). If a geological, geochemical, or geophysical survey was performed, as per 30 U.S.C. 28-1, reference title of report of survey in question, give cost and date of the survey and report, and indicate it was filed with the County Recorder.

Description	Value

TAX COLLECTOR USE

Total Value________________________

FM-7 Affadavit of Assessment Work (California)
(Proof of Labor)

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Rev. 8/97
p. 2

2B. Date(s) the assessment work was performed ____________________
(month) (day(s)) (Year)

3. Name(s) and address(s) of Person(s) who performed the labor and improvements:

Name(s) (print)	Current Mailing or Residence Address (print)

4. Name(s) and address(s) of Person(s) who hold and claim subject mining claim(s) for the valuable mineral(s) contained therein:

Name(s) (print)	Current Mailing or Residence Address (print)

5. The undersigned testify that on the date of____________, 19__, all monuments required by law were erected upon the subject claim(s), and all notices required by law were posted on the subject claim(s) or copies thereof were in place, and at said date each corner monument bore or contained marking sufficient to appropriately designate the corner of the claim to which it pertains and the name of the claim(s).

I (we) hereby certify under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct:

____, Date______________
(Signature of person(s) responsible for above statements)

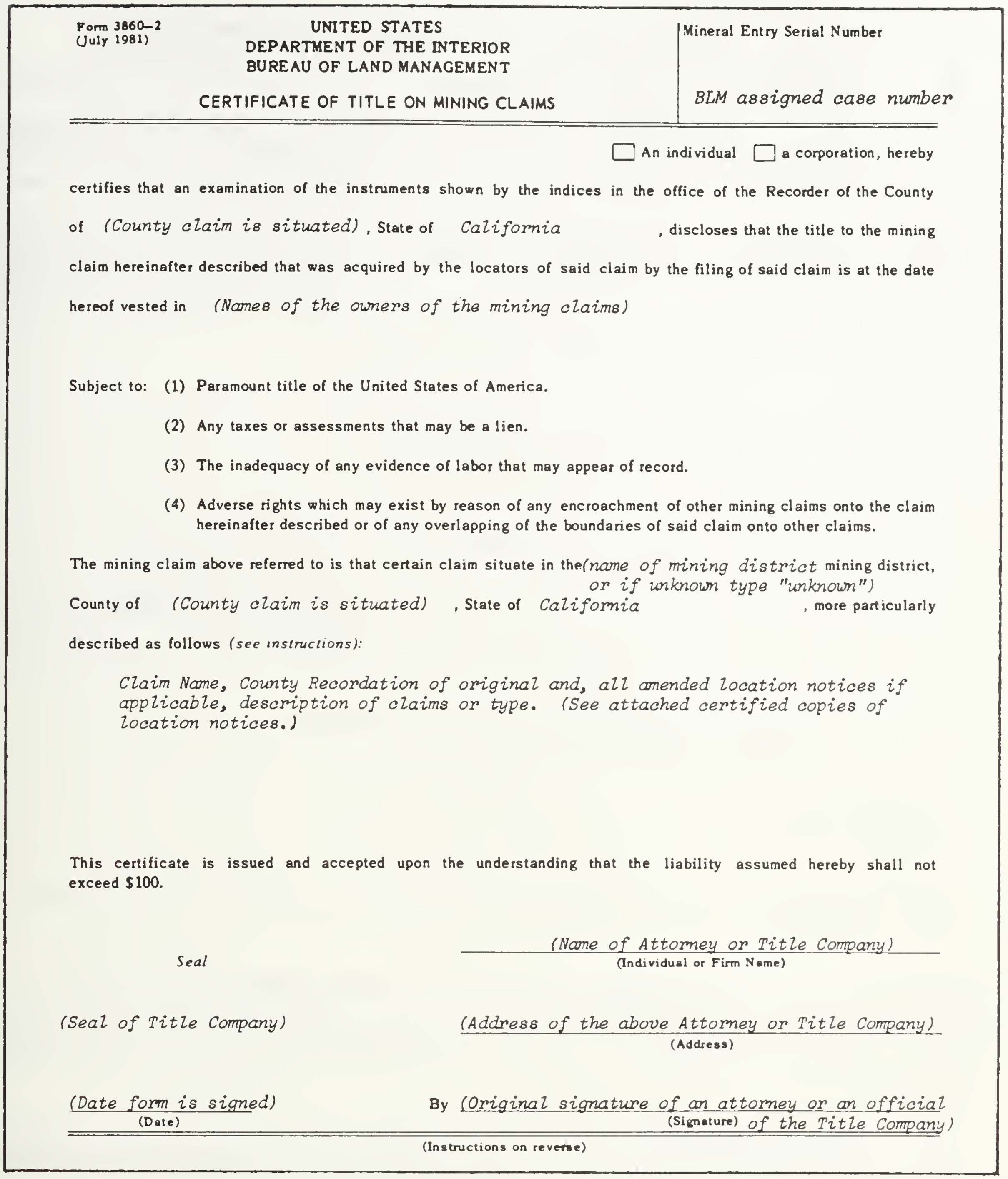
FAILURE TO FILE ANNUALLY EVIDENCE OF ASSESSMENT WORK OR NOTICE OF INTENT T HOLD A MINING CLAIM WITH BOTH THE APPROPRIATE COUNTY RECORDER AND THE BUREAU OF LAND MANAGEMENT WITHIN PRESCRIBED TIME PERIODS WILL CONSTITUTE A ABANDONMENT OF THE MINING CLAIM(S).

FILE THIS ORIGINAL NOTICE WITH APPROPRIATE COUNTY RECORDER (by September 3 AND FILE A DUPLICATE NOTICE (by December 30) WITH THE BUREAU OF LAND MANAGEMENT, CALIFORNIA STATE OFFICE, 2800 COTTAGE WAY RM W1834, SACRAMENTO, CA 95825-0451

Any person who willfully makes a false statement with respect to any mining claim on the affidavit of labor or improvements or on the supplementary affidavit is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than two hundred dollars($200) or by imprisonment in the county jail for not more than six months, or by bot the fine and imprisonment. (Public Resources Code of California, Div. 3.5, Chap. 1, Sec. 3913c,d).

This form is for the purpose of complying with the laws of the United States and the State of California pertaining to assessment work (30 USC 28, 43 CFR 3833.2). Subject to Paperwo Reduction Act and Privacy Act statements available at the BLM California State Office, Sacramento.

FM-7 Affadavit of Assessment Work (page 2)



Form 3860–2
(July 1981)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

CERTIFICATE OF TITLE ON MINING CLAIMS

Mineral Entry Serial Number *BLM assigned case number*

☐ An individual ☐ a corporation, hereby certifies that an examination of the instruments shown by the indices in the office of the Recorder of the County of *(County claim is situated)*, State of *California*, discloses that the title to the mining claim hereinafter described that was acquired by the locators of said claim by the filing of said claim is at the date hereof vested in *(Names of the owners of the mining claims)*

Subject to:
- (1) Paramount title of the United States of America.
- (2) Any taxes or assessments that may be a lien.
- (3) The inadequacy of any evidence of labor that may appear of record.
- (4) Adverse rights which may exist by reason of any encroachment of other mining claims onto the claim hereinafter described or of any overlapping of the boundaries of said claim onto other claims.

The mining claim above referred to is that certain claim situate in the *(name of mining district or if unknown type "unknown")* mining district, County of *(County claim is situated)*, State of *California*, more particularly described as follows *(see instructions)*:

Claim Name, County Recordation of original and, all amended location notices if applicable, description of claims or type. (See attached certified copies of location notices.)

This certificate is issued and accepted upon the understanding that the liability assumed hereby shall not exceed $100.

(Name of Attorney or Title Company)
(Individual or Firm Name)

Seal

(Seal of Title Company)

(Address of the above Attorney or Title Company)
(Address)

(Date form is signed)
(Date)

By *(Original signature of an attorney or an official of the Title Company)*
(Signature)

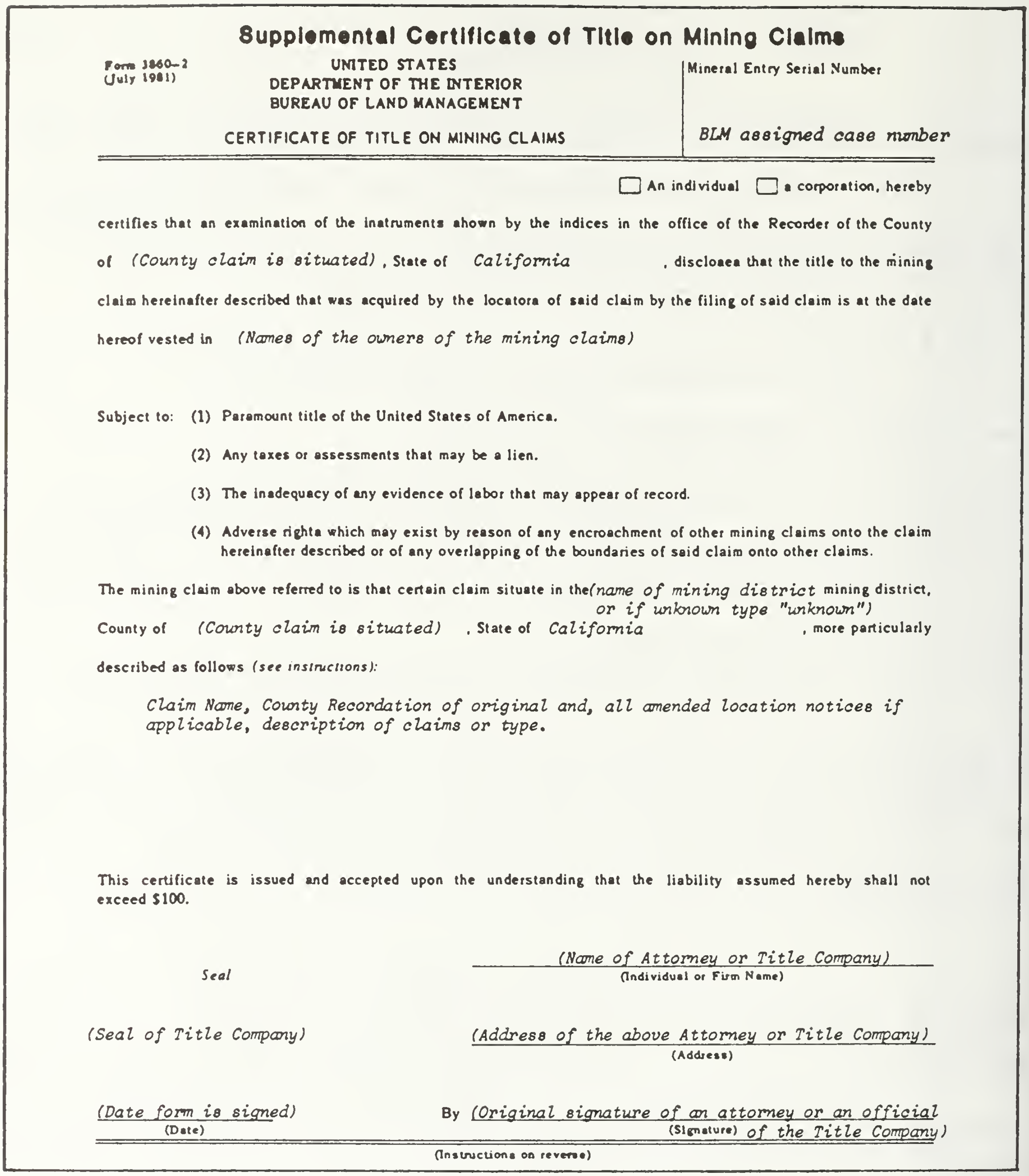
(Instructions on reverse)

INSTRUCTIONS (from reverse side of form)

1. Description of mining claims may be incorporated by reference to and attachment of a certified copy of certificate of location.

2. A certificate, when executed by a corporation, must:
   - (a) bear the corporate seal;
   - (b) indicate where corporation was organized; and,
   - (c) indicate authority to do business in the state in which the land is located.

FM-8 Certificate of Title on Mining Claims



Supplemental Certificate of Title on Mining Claims

Form 3860-2
(July 1981)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

CERTIFICATE OF TITLE ON MINING CLAIMS

Mineral Entry Serial Number

BLM assigned case number

☐ An individual ☐ a corporation, hereby certifies that an examination of the instruments shown by the indices in the office of the Recorder of the County of *(County claim is situated)*, State of *California*, discloses that the title to the mining claim hereinafter described that was acquired by the locators of said claim by the filing of said claim is at the date hereof vested in *(Names of the owners of the mining claims)*

Subject to:
(1) Paramount title of the United States of America.
(2) Any taxes or assessments that may be a lien.
(3) The inadequacy of any evidence of labor that may appear of record.
(4) Adverse rights which may exist by reason of any encroachment of other mining claims onto the claim hereinafter described or of any overlapping of the boundaries of said claim onto other claims.

The mining claim above referred to is that certain claim situate in the *(name of mining district or if unknown type "unknown")* mining district, County of *(County claim is situated)*, State of *California*, more particularly described as follows *(see instructions)*:

Claim Name, County Recordation of original and, all amended location notices if applicable, description of claims or type.

This certificate is issued and accepted upon the understanding that the liability assumed hereby shall not exceed $100.

Seal

(Seal of Title Company)

(Name of Attorney or Title Company)
(Individual or Firm Name)

(Address of the above Attorney or Title Company)
(Address)

(Date form is signed)
(Date)

By *(Original signature of an attorney or an official of the Title Company)*
(Signature)

(Instructions on reverse)

INSTRUCTIONS (from reverse side of form)

1. Description of mining claims may be incorporated by reference to and attachment of a certified copy of certificate of location.

2. A certificate, when executed by a corporation, must:
   (a) bear the corporate seal;
   (b) indicate where corporation was organized; and,
   (c) indicate authority to do business in the state in which the land is located.

FM-9 Supplemental Certificate of Title on Mining Claims

rm 1860-1
oril 1991)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

FIRST HALF—MINERAL ENTRY FINAL CERTIFICATE

Serial Number
Date of Entry

ing Fees, $	Receipt Number	Date
rchase Money, $	Receipt Number	Date

R.S. 2325; 30 U.S.C. 29 (Lode) ☐ R.S. 2329, 2331; 30 U.S.C. 35 (Placer) ☐ R.S. 2337, 30 U.S.C. 42(a) (Mill Site-Independent or Lode)
Act of March 18, 1960, 30 U.S.C. 42(b) (Mill Site-Placer)

this day

posited the purchase money in the sum shown above for certain

lode ☐ placer mining claim(s) ☐ mill site(s) described as:

ounty , State , Mining District .

XPRESSLY EXCEPTING AND EXCLUDING from said purchase all that portion of the ground embraced in mining claim(s) or survey(s) designated as
rvey(s) Number(s)

HEREFORE: Patent may issue if all is found regular and upon demonstration and verification of a discovery of a valuable mineral deposit, subject to
e reservations, exceptions, and restrictions noted herein.

(Signature Date) (Signature of Authorized Officer)

(Title)

U.S. GOVERNMENT PRINTING OFFICE: 1993 - 774-017/67050

M-10 First Half - Mineral Entry Final Certificate

3860-5
h 1994)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

APPLICATION FOR SURVEY OF MINING CLAIM

FORM APPROVED
OMB NO. 1004-0025
Expires: September 30, 1996

Date

SEE INSTRUCTIONS ON REVERSE

ame of Applicant *(first, middle initial, last)*	Address *(include zip code)*

y makes application for an official mineral survey of the mining claims named and identified in this application

ive group name *(if any)*

3. NAME OF CLAIM(S)

NAME OF LOCATION	DATE			BLM MINING CLAIM SERIAL NUMBER
	LOCATED AND AMENDED	RECORDED WITH COUNTY	RECORDED WITH BLM	

4. LOCATION OF CLAIM(S)

on	Township	Range	Meridian
nty		State	National Forest

ls each claim based on a valid location and fully described in the certified copy of the record of each location certificate filed with this application?
☐ Yes ☐ No

ls each location distinctly marked by monuments on the ground and can its boundaries be traced readily? ☐ Yes ☐ No

No Survey of Mining Claim may be granted unless a completed Application form has been received (30 U.S.C. 21 through 54)

M-11 Application for Survey of Mining Claim

6. A deposit, is submitted with the application by ☐ cash ☐ money order ☐ certified check, made payable to the Bureau of Land Managemen in the amount of $, to cover the estimated cost of office work.

7. It is requested that the survey be made, in accordance with the regulations, by the following U.S. Mineral surveyor.

Date	Signature of Applicant

INSTRUCTIONS

1. This application is made under the provisions of Chapter 6, Title 32, Revised Statutes of the United States and regulations thereunder (43 CFR 3861.1).
2. Applications **must** be typed or printed plainly in ink and submitted to the State Director, Bureau of Land Management, having authority to issue survey orders in that State as follows: Alaska, Anchorage; Arizona, Phoenix; Arkansas and New Mexico, Santa Fe; California, Sacramento; Colorado, Denver; North and South Dakota and Montana, Billings; Nebraska, Kansas, and Wyoming, Cheyenne; Idaho, Boise; Nevada, Reno; Washington and Oregon, Portland; Utah, Salt Lake City; all other States, Director, Bureau of Land Management, Washington, D.C. 20240.
3. Name the claimant (individual, partnership, company or corporation) should appear on the application in the same manner as it will appear in the patent when issued. The application **must be signed** by the claimant or an authorized agent.
4. **Two copies of the record of the location certificate must be filed with the application,** one of which **must** be certified by the custodian of the records where mining claims are recorded, usually the Clerk of the County in which the claim is located. Each certificate **must** contain the name of the locator, date of location, point of discovery, and such definite description of the claim by reference to natural objects or permanent monuments as will serve to identify the claim on the ground. If a location certificate has been amended and the survey is to be based on the amended location, **two** copies of the latest amended certificate are required with the application for survey, **one of which must be certified.**
5. Applicants are requested to list in one application the contiguous locations constituting the claim for which an official survey is desired. Several locations may be embraced in as single survey only when they are contiguous, by which is meant locations that are actually in conflict or adjoining; locations joining at a single corner are no considered as contiguous.
6. A millsite may be applied for separately or in conjunction with th survey of a mining claim. Millsites **must** be located on nonminera ground, may not embrace more than five acres in compact form, an **must** be occupied or used in connection with mining activity.
7. Any change in the application for survey, including the addition o exclusion of locations, or the designation of a different minera surveyor, requires an amended application which will be the basis fo issuance of an amended survey order.
8. The claimant is required, in all cases, to select the mineral surveyor t execute the survey from the Bureau of Land Management register o mineral surveyors and to make satisfactory settlement arrangement for payment for his services. **The United States will not b responsible for the settlement.**
9. A minimum deposit of $750 for the first location, plus $300 for eac additional location or millsite, to cover the cost of office expense **must** be made with the Bureau of Land Management before an orde for the survey will be issued. In accordance with CFR 43 Sectio 3861.6-1, each State Office may require a deposit that is sufficient t cover their estimate of each order for survey. If this deposit i insufficient to cover the actual cost of office work, the claimant will b billed for an additional sum sufficient to cover the actual cost o drafting and other office work in connection with processing th returns of the mineral surveys. If the deposit is more than the actua cost, a refund will be made to the claimant.
10. Mineral surveyors are precluded from acting, either directly o indirectly, as agents or attorneys in proceedings to obtain patent fo mining claims. Interested parties are precluded from working o mineral surveys as chainmen or field assistants.

NOTICE

The Privacy Act of 1974 and the regulation in 43 CFR 2.48(d) provide that you be furnished the following information in connection with information required by this application.

AUTHORITY: 30 U.S.C. 22, 29, 39, 43 CFR 3861.1-1.

PRINCIPLE PURPOSE: The information is to be used to process your application for a mineral survey.

ROUTINE USES: (1) The adjudication of the applicants' rights to the land or resources. (2) Documentation for public information in support of notations made on land status records for the management, disposal and use of public lands and resources. (3) Transfer to appropriate Federa agencies when concurrence is required prior to granting a right in publi lands or resources. (4)(5) Information from the record and/or the recor will be transferred to appropriate Federal, State, local or foreign agencies when relevant to civil, criminal or regulatory investigations o prosecutions.

EFFECT OF NOT PROVIDING INFORMATION: The applicatio may be rejected.

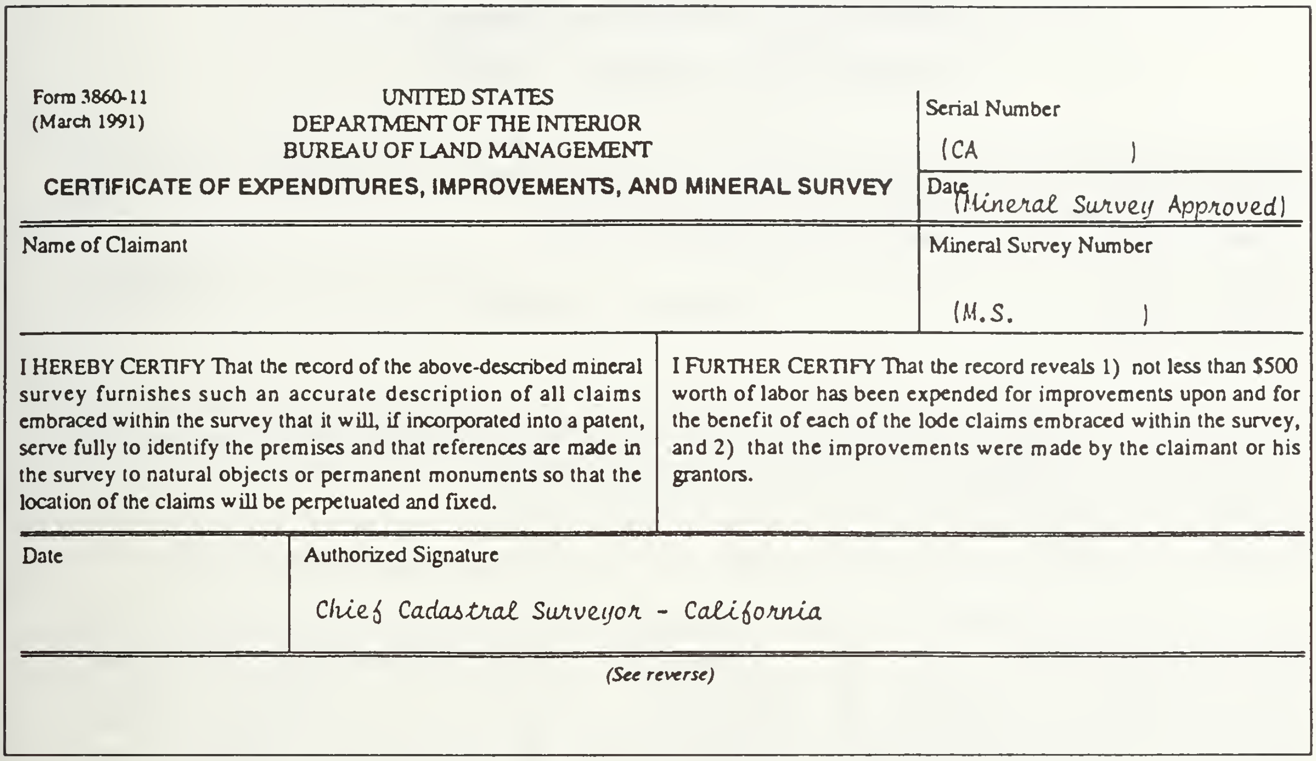
The Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.) requires us to inform you that:

Information is being collected to allow the Bureau of Land Management to properly provide the requested service.
Information will be used to determine the level of service required.
Response to this request is required to obtain a benefit.

Public reporting burden for this form is estimated to average 4 hours per response, including the time for reviewing instructions, gathering and maintainin data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to U.S. Department of th Interior, Bureau of Land Management (Alternate) Bureau Clearance Officer, (WO-873), 1849 C Street, N.W., Washington, D.C. 20240, and the Office o Management and Budget Paperwork Reduction Project (1004-0025), Washington, D.C. 20503.

☆U.S. GOVERNMENT PRINTING OFFICE: 1994 - 573-004/81075

FM-11 Application for Survey of Mining Claim (page 2)



Form 3860-11
(March 1991)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

CERTIFICATE OF EXPENDITURES, IMPROVEMENTS, AND MINERAL SURVEY

Serial Number
(CA)

Date (Mineral Survey Approved)

Name of Claimant

Mineral Survey Number
(M.S.)

I HEREBY CERTIFY That the record of the above-described mineral survey furnishes such an accurate description of all claims embraced within the survey that it will, if incorporated into a patent, serve fully to identify the premises and that references are made in the survey to natural objects or permanent monuments so that the location of the claims will be perpetuated and fixed.

I FURTHER CERTIFY That the record reveals 1) not less than $500 worth of labor has been expended for improvements upon and for the benefit of each of the lode claims embraced within the survey, and 2) that the improvements were made by the claimant or his grantors.

Date

Authorized Signature
Chief Cadastral Surveyor - California

(See reverse)

INSTRUCTIONS (from reverse side of form)

1. Title 43 Code of Federal Regulations 3861.2-2 requires that this *Certificate* be filed with the manager of the proper BLM office by an applicant for patent at time of filing the application or at any time within the sixty (60) days of publication.
2. If the record shows that the expenditures for improvements equal or exceed $500 at the time of survey then this form should be attached by the cadastral engineer (Chief, Cadastral Surveyor) to the claimant's copy of the field notes.
3. If the record shows that the expenditures for improvements do not equal or exceed $500 at the time of survey then it is the responsibility of the applicant to have this form executed by the Chief Cadastral Surveyor and filed with the manager of the proper BLM office during the 60-day publication period.

M-12 Certificate of Expenditures, Improvements, and Mineral Survey
(used when a mining claim has a mineral survey)

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

CERTIFICATE OF MINERAL SURVEY

I, ____________________, HEREBY CERTIFY that in pursuance of an order received from the Bureau of Land Management, Division of Operations, Branch of Cadastral Survey at Sacramento, California, dated ______________, 19____, I have carefully executed the survey of the claim of ______________________, known as the ____, situate in ____________________________ Meridian, County of ______________, in the State of California.

This mineral survey, designated as number ________, has been executed by me and under my direction, and has been made in strict conformity with said order, the Manual of Instructions for the Survey of the Public Lands of the United States, and in specific manner described in the foregoing field notes.

NOTE: The following paragraph applies to mining claims only and not mill sites.

I FURTHER CERTIFY that the labor expended and improvements made upon and for the benefit of the ____________ location(s) embraced in the said mining claim by claimant(s) or grantor(s) are fully stated in my report. The character, extent, location, and itemized value are specified in full detail. No portion of, or interest in, said labor and improvements so credited to this claim has been included in the estimate of expenditures upon any other claim.

______________________ Date

____________________________ (surveyor's name)
Mineral Surveyor

CERTIFICATE OF APPROVAL

BUREAU OF LAND MANAGEMENT
Sacramento, California

The foregoing field notes of Mineral Survey No. ____________________, in ____, in Township __________, Range ____________, ______________ Meridian, __________ County, California, executed by ______________________, Mineral Surveyor, under order dated ______________, having been critically examined and found correct, are hereby approved.

______________________ Date

____________________________ Chief Cadastral Surveyor - California

FM-13 Mineral Survey Approval/Certificate of Mineral Survey

MODEL FORMATS

NOTICE OF INTENTION TO APPLY FOR MINERAL PATENT

NOTICE IS HEREBY GIVEN that ______________________________
(names of owners of claims)

intend to make application for a patent to the following unpatented __________ mining claims situated in ______________________ County, California.

____
(name of Mining District, or "Unknown."

(Names of claims)

The foregoing claims are located on land described as ______________ _________, Section _________, Township _________, Range _________, ___________ Meridian. (Show mineral number, if applicable, or legal subdivision description.)

(a) The ______________________ mining claim is situated in ___________________ County, California and contains ____________ acres. The claim was located by __________________________________ on ____________________.

(b) The __________________________ mining claim is situated in ___________________ County, California and contains ___________ acres. The claim was located by ___________________________________ on ______________________.

Notices of Location for these claims have been recorded in the Official Records of ___________________ County, California and filed with the California State Office of the Bureau of Land Management as follows:

Claim Name Serial No.	Original Notice (County Book/Pg)	Amended Notice (County Book/Pg)	BLM Serial No.

(same information as listed on Certificate of Title, Form 3860-2)

There are no conflicts with other claims or fee lands. The adjoining claims as shown on the plat of survey are ______________________________________.

DATE OF POSTING ON CLAIM: ______________

____
(name of owner doing the posting)

____
(address of above owner)

MF-1 Notice of Intention to Apply for Mineral Patent

WITNESSES' STATEMENT
AS TO
POSTING NOTICE OF INTENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

______________________________ of ______________________________
(Name of Witness) (City and State whore witness resides)

______________________________ of ______________________________
(Name of Witness) (City and State where witness resides)

witnesses, each for himself and not one for the other, being first duly sworn according to law deposes and says:

1. That he is a citizen of the United States of lawful age.

2. That he was present on ____________________ when a Notice of Intention
(date of posting)
to Apply for Mineral Patent, and copy of the plat of survey (if applicable), was posted in a conspicuous place on the following:

______________________________ claims.
(type of claim, lode, placer, mill site)
(Name ot Claim)

3. The Notice of Intention to Apply for Mineral Patent and plat of survey was posted on the claim by:

__________________________ on behalf of __________________, owners of the
(owner who did actual posting) (owners of claims)

____________________________________.
(name of the mining claims)

4. The Notice (and plat of survey) was posted conspicuously on the

__________________ claim, part of the contiguous claim group. The Notice
(name of claim)
(and plat of survey) is affixed to a ____________________________________.
(describe where and how notice and plat of survey is posted)
A copy of the posted Notice is attached hereto.

DATED this ____________ day of ____________________.
(month and year)

______________________________ ______________________________
Signature (Signature of Witness) Signature (Signature of Witness)

MF-2 Witnesses' Statement as to Posting of Notice of Intent

PROOF OF IMPROVEMENTS

(For use with unsurveyed claims)

I, ______________________________ of ______________________,
(witness name) (city of residence)

California, and I, ____ of
(witness name)

________________________, California, each for himself and not one for the
(city of residence)

other, says:

That he is a citizen of the United States of America, and of the State of California, and over the age of twenty-one years;

That he is well acquainted with the __________________________________,
(name of mining claim(s))

under application for patent;

That he is a disinterested witness who is not employed nor does he receive any type of revenue from the mineral patent applicant, and that he is cognizant of the facts relative to the application;

That improvements made by the applicant or his grantors on the above-named mining claims are not less than $500 in value.

Date: ____________________ __________________________
(Witness signature)

Date: ____________________ __________________________
(Witness signature)

MF-3 Proof of Improvements (Placer Mining Claims)

STATEMENT OF UNITED STATES CITIZENSHIP

I, ______________________________, state that I am a native born citizen of the United
(name of owner)

States of America.

I was born in ____________________________ on the date of _________________________.
(City and State) (date of birth)

My residence is ____.
(Street or P.O. Box, City, State, Zip Code)

____
Signature
(Original signature of owner)

____
Date
(Date this document is completed)

MF-4 Statement of United States Citizenship

Statement Of All Placer Ground and No Known Lodes

I, ________________________________ of ________________________,
(witness name) (city of residence)

California, and I, ____ of
(witness name)

__________________________, California, each for himself and not one for the
(city of residence)

other, says:

That he is a citizen of the United States of America, and of the State of California, and over the age of twenty-one years;

That he is well acquainted with the ____________________________________,
(name of mining claim)

under application for patent;

That no known veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, exist on the above-named mining claim(s), and we believe that none exists thereon. The claim(s) is all placer ground within the meaning of the mining laws.

____
(Witness signature)

____
(Witness signature)

MF-5 Statement of All Placer Ground and No Known Lodes

Witnesses' Statement of Nonmineral Character of Mill Sites

____
(Name of mill site(s))

________________________ hereby saysI
(Name of witness)

I am familiar with the ground located and claimed by the above named mill site(s). The site(s) is nonmineral ground, and so far as I can determine by a close examination of the surface, there is no valuable mineral deposit and no deposit of valuable mineral on the site(s).

____
Signature

____
Date

MF-6 Witnesses' Statement of Nonmineral Character of Mill Sites

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

In the matter of application of)
(Name of applicant(s))________)
for patent to (Name of claim(s)))
______________________________)
______________________________)
United States Mineral Survey No.)
______________ (if applicable) and)
situated in the ______________)
Mining District, ______________)
County, California.)

AGREEMENT OF PUBLISHER

The undersigned, ________(Name of publisher)__________, publisher of the __________(Name of newspaper)__________________ published at ________ (full address of newspaper)______________________________________, ____ County, does hereby agree to publish a notice required by the provisions of Title 30, United States Code, of the intention of ______________(Name of applicant(s))__________ to apply for a patent covering the above-referred to ______________(number of claims)____________________(lode or placer or millsite)______ mining claims situated in the ____________________________ Mining District, __________________________ County, California, and to hold the said patent applicant(s) alone responsible for the amount due for publishing the same.

It is hereby expressly stipulated and agreed that no claim will be made against the Government of the United States or its officers or agents for such publication.

The ______(Name of newspaper)____________________ is published ____________(daily, weekly, and so forth)____________________ on ______(what days of the week if other than daily).

Dated this ____________________ day of ______________________, 19____.

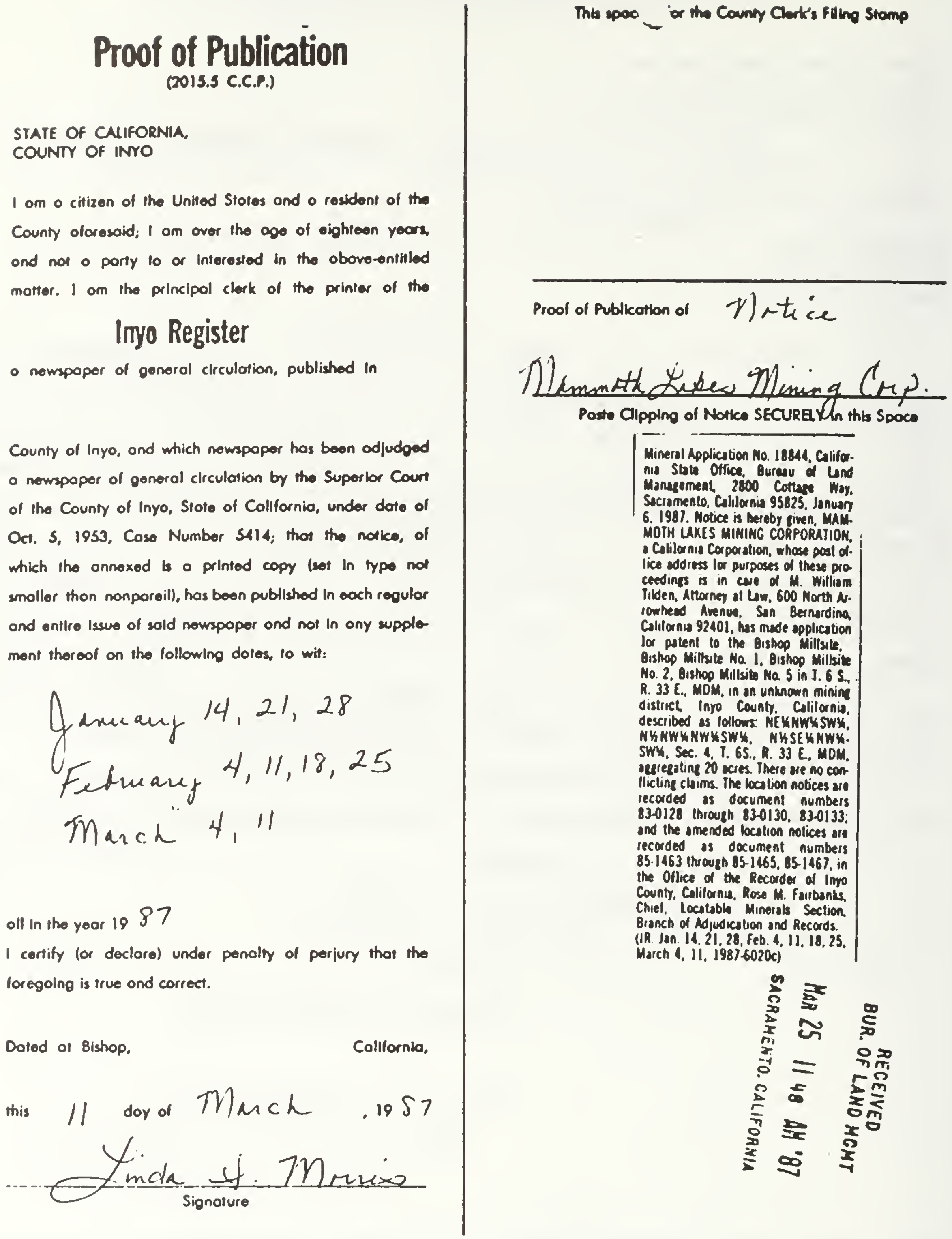
(NAME OF NEWSPAPER)

By ________(signature)__________

(print or type name of) Publisher (Title)

This notice must be published either in a weekly newspaper for 9 consecutive weeks, or in a daily newspaper for 9 consecutive Wednesdays.

MF-7 Agreement of Publisher



Proof of Publication

(2015.5 C.C.P.)

STATE OF CALIFORNIA,
COUNTY OF INYO

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the printer of the

Inyo Register

a newspaper of general circulation, published in

County of Inyo, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Inyo, State of California, under date of Oct. 5, 1953, Case Number 5414; that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

January 14, 21, 28
February 4, 11, 18, 25
March 4, 11

all in the year 19 87

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated at Bishop, California,

this 11 day of March, 19 87

Linda J. Morris
Signature

This space for the County Clerk's Filing Stamp

Proof of Publication of Notice

Mammoth Lakes Mining Corp.

Paste Clipping of Notice SECURELY in this Space

Mineral Application No. 18844, California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825, January 6, 1987. Notice is hereby given, MAMMOTH LAKES MINING CORPORATION, a California Corporation, whose post office address for purposes of these proceedings is in care of M. William Tilden, Attorney at Law, 600 North Arrowhead Avenue, San Bernardino, California 92401, has made application for patent to the Bishop Millsite, Bishop Millsite No. 1, Bishop Millsite No. 2, Bishop Millsite No. 5 in T. 6 S., R. 33 E., MDM, in an unknown mining district, Inyo County, California, described as follows: NE¼NW¼SW¼, N½NW¼NW¼SW¼, N½SE¼NW¼SW¼, Sec. 4, T. 6S., R. 33 E., MDM, aggregating 20 acres. There are no conflicting claims. The location notices are recorded as document numbers 83-0128 through 83-0130, 83-0133; and the amended location notices are recorded as document numbers 85-1463 through 85-1465, 85-1467, in the Office of the Recorder of Inyo County, California, Rose M. Fairbanks, Chief, Locatable Minerals Section, Branch of Adjudication and Records.
(IR Jan. 14, 21, 28, Feb. 4, 11, 18, 25, March 4, 11, 1987-6020c)

RECEIVED
BUR. OF LAND MGMT
MAR 25 11 48 AM '87
SACRAMENTO, CALIFORNIA

MF-8 Proof of Publication

PROOF OF CONTINUOUS POSTING

Application No. CA ____________________

I, ____________________________________, state that on __________________,
(Applicant's name) (date)

the notice of intention to make such application was posted in a conspicuous place upon the claim, to-wit: ____, and, such
(Brief description of where notice is posted)

notice (and plat) remained so posted from ____________________________ to ____________________________, which include the full sixty day publishing period.*

I declare under penalty and perjury that the foregoing is true and correct.

Executed on the _______ day of ______________, at ____________________, California.

____
(Applicant's signature)

---

* Dates must include the fourth day after the last day it is published in the newspaper.

MF-9 Proof of Continuous Posting

STATEMENT OF FEES AND CHARGES PAID

Application No. CA ____________________

I, ____, state that all charges

(applicant's name)

and fees paid to the Bureau of Land Management, together with publication costs and survey costs in connection with the application are as follows:

Filing Fee	$
Publication	$
Application for Survey	$
Actual survey	$
Purchase money	$

______________________________ (Date)

______________________________ (Applicant's signature)

MF-10 Statement of Fees and Charges Paid

STATE OFFICE
Federal Office Building
2800 Cottage Way
Sacramento, California 95825

9605
MS_____
(CA-942)

Memorandum

To: _______________________, Mineral Surveyor

From: Chief, Branch of Cadastral Survey

Subject: Order for Mineral Survey No. ______________

Application dated ________________, 19_____, has been filed in this office by __________________________, for an official survey of a mining claim situate in _______________, Township __________, Range __________, _____________ Meridian, ___________ Mining District, County of ___________________, in the State of California.

The mining claim is fully described on the attached copy of the location notice. The claim consists of the location(s) named, located, and recorded as follows:

NAME OF LOCATION	DATE LOCATED AND AMENDED	DATE RECORDED COUNTY	DATE RECORDED BLM	BLM CALIFORNIA MINING CLAIM (CAMC) SERIAL NO.

You are hereby directed to make the survey of said claim in strict conformity with existing laws, official regulations, and instructions thereunder, and make proper return of the survey to this office. This survey will be designated as Mineral Survey No. __________.

The field note record will contain a technical record of the entire procedure, giving the precise course and length of each line surveyed, with a full and complete description of all monuments established or reestablished. True line diagrams (Manual 10-41) which form the basis of the official plat, the ultimate purpose of which is a complete graphic representation of the public lands surveyed, will be made.

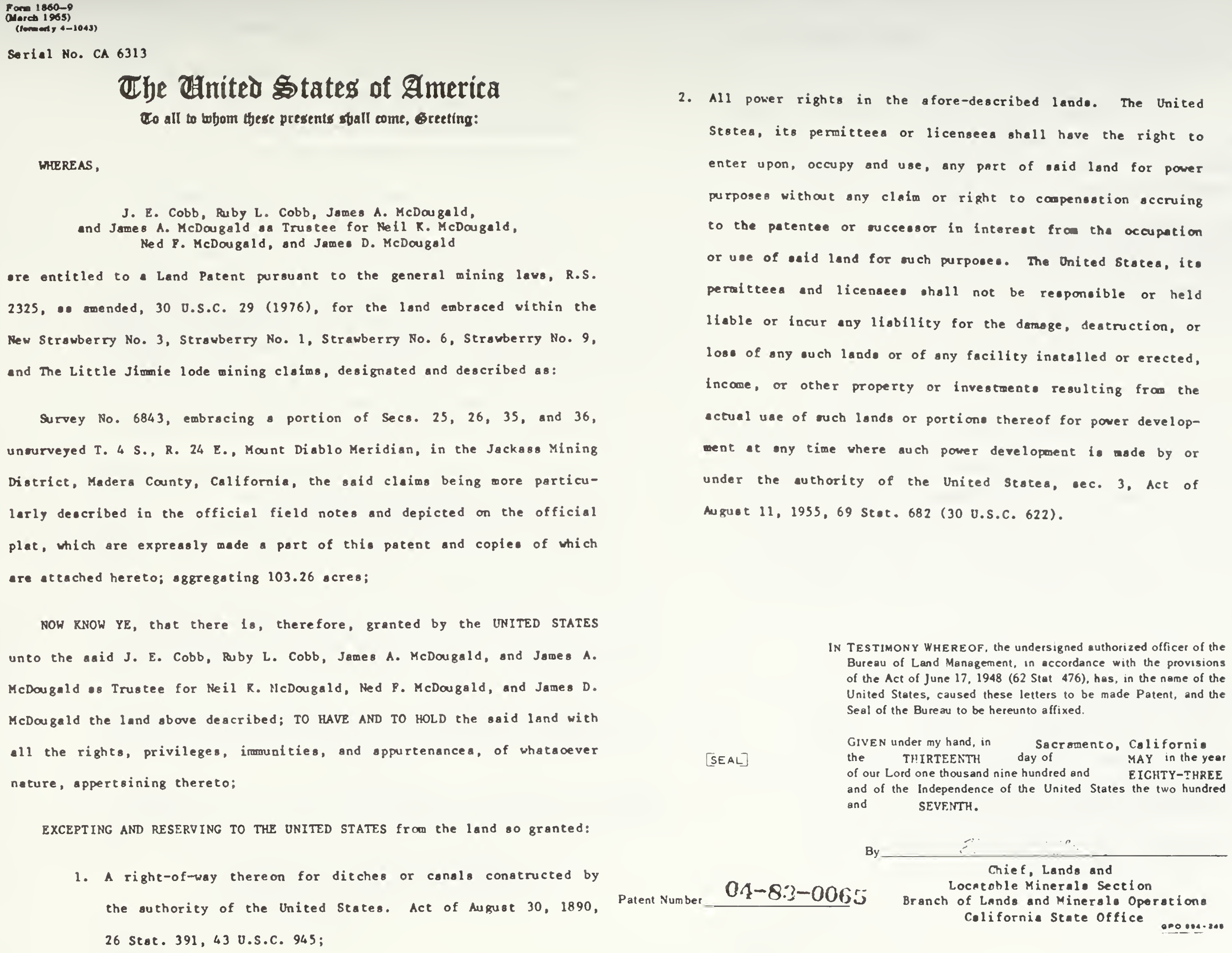
Should the occasion arise appearing to demand additional instructions, the Mineral Surveyor will be expected to promptly submit a report of the situation together with a recommendation for office consideration and action.

Attachment
Location Notices (cy)

MF-11 Typical Order for Mineral Survey

DOCUMENTS

D-1 Mineral Patent for Lode Mining Claims with Right-of-Way and Power Rights Reservations



Form 1860-9
(March 1965)
(formerly 4-1043)

Serial No. CA 6313

The United States of America

To all to whom these presents shall come, Greeting:

WHEREAS,

J. E. Cobb, Ruby L. Cobb, James A. McDougald,
and James A. McDougald as Trustee for Neil K. McDougald,
Ned F. McDougald, and James D. McDougald

are entitled to a Land Patent pursuant to the general mining laws, R.S. 2325, as amended, 30 U.S.C. 29 (1976), for the land embraced within the New Strawberry No. 3, Strawberry No. 1, Strawberry No. 6, Strawberry No. 9, and The Little Jimmie lode mining claims, designated and described as:

Survey No. 6843, embracing a portion of Secs. 25, 26, 35, and 36, unsurveyed T. 4 S., R. 24 E., Mount Diablo Meridian, in the Jackass Mining District, Madera County, California, the said claims being more particularly described in the official field notes and depicted on the official plat, which are expressly made a part of this patent and copies of which are attached hereto; aggregating 103.26 acres;

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES unto the said J. E. Cobb, Ruby L. Cobb, James A. McDougald, and James A. McDougald as Trustee for Neil K. McDougald, Ned F. McDougald, and James D. McDougald the land above described; TO HAVE AND TO HOLD the said land with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, appertaining thereto;

EXCEPTING AND RESERVING TO THE UNITED STATES from the land so granted:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945;

2. All power rights in the afore-described lands. The United States, its permittees or licensees shall have the right to enter upon, occupy and use, any part of said land for power purposes without any claim or right to compensation accruing to the patentee or successor in interest from the occupation or use of said land for such purposes. The United States, its permittees and licensees shall not be responsible or held liable or incur any liability for the damage, destruction, or loss of any such lands or of any facility installed or erected, income, or other property or investments resulting from the actual use of such lands or portions thereof for power development at any time where such power development is made by or under the authority of the United States, sec. 3, Act of August 11, 1955, 69 Stat. 682 (30 U.S.C. 622).

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

[SEAL]

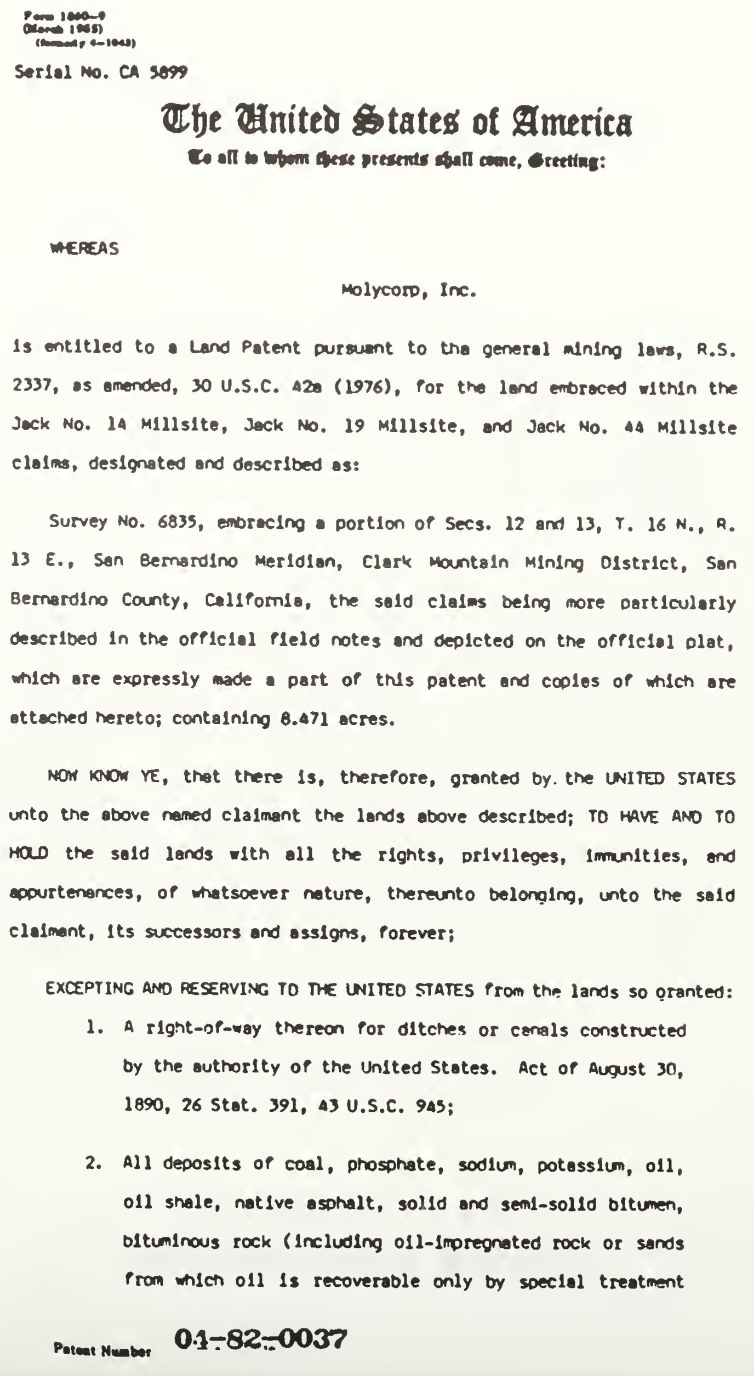
GIVEN under my hand, in Sacramento, California the THIRTEENTH day of MAY in the year of our Lord one thousand nine hundred and EIGHTY-THREE and of the Independence of the United States the two hundred and SEVENTH.

By ______________________

Chief, Lands and
Locatable Minerals Section
Branch of Lands and Minerals Operations
California State Office

Patent Number 04-83-0065

GPO 884-248



Form 1860-9
(March 1965)
(formerly 4-1043)

Serial No. CA 5899

The United States of America

To all to whom these presents shall come, Greeting:

WHEREAS

Molycorp, Inc.

is entitled to a Land Patent pursuant to the general mining laws, R.S. 2337, as amended, 30 U.S.C. 42a (1976), for the land embraced within the Jack No. 14 Millsite, Jack No. 19 Millsite, and Jack No. 44 Millsite claims, designated and described as:

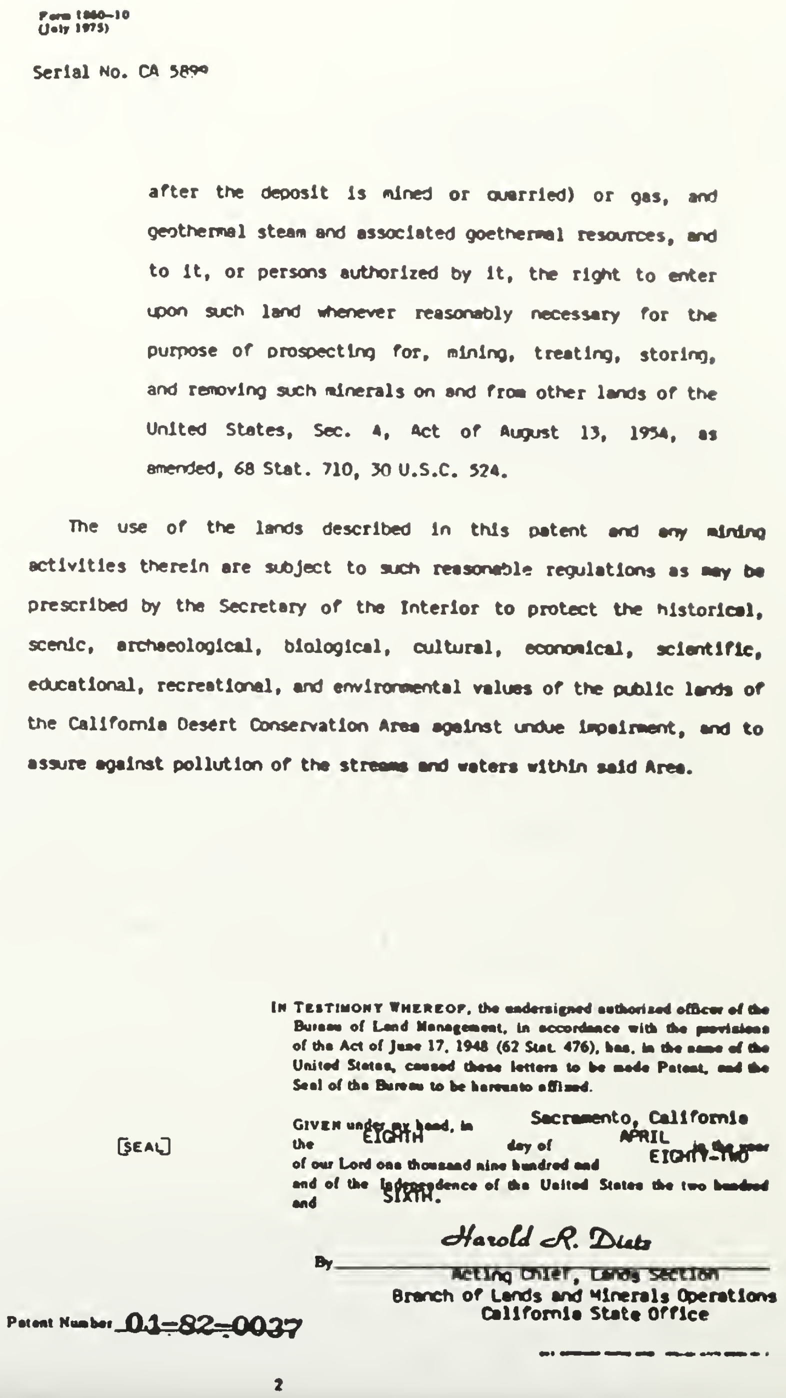
Survey No. 6835, embracing a portion of Secs. 12 and 13, T. 16 N., R. 13 E., San Bernardino Meridian, Clark Mountain Mining District, San Bernardino County, California, the said claims being more particularly described in the official field notes and depicted on the official plat, which are expressly made a part of this patent and copies of which are attached hereto; containing 8.471 acres.

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES unto the above named claimant the lands above described; TO HAVE AND TO HOLD the said lands with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant, its successors and assigns, forever;

EXCEPTING AND RESERVING TO THE UNITED STATES from the lands so granted:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945;
2. All deposits of coal, phosphate, sodium, potassium, oil, oil shale, native asphalt, solid and semi-solid bitumen, bituminous rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment

Patent Number 04-82-0037



Form 1860-10
(July 1975)

Serial No. CA 5899

after the deposit is mined or quarried) or gas, and geothermal steam and associated goethermal resources, and to it, or persons authorized by it, the right to enter upon such land whenever reasonably necessary for the purpose of prospecting for, mining, treating, storing, and removing such minerals on and from other lands of the United States, Sec. 4, Act of August 13, 1954, as amended, 68 Stat. 710, 30 U.S.C. 524.

The use of the lands described in this patent and any mining activities therein are subject to such reasonable regulations as may be prescribed by the Secretary of the Interior to protect the historical, scenic, archaeological, biological, cultural, economical, scientific, educational, recreational, and environmental values of the public lands of the California Desert Conservation Area against undue impairment, and to assure against pollution of the streams and waters within said Area.

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat. 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

[SEAL]

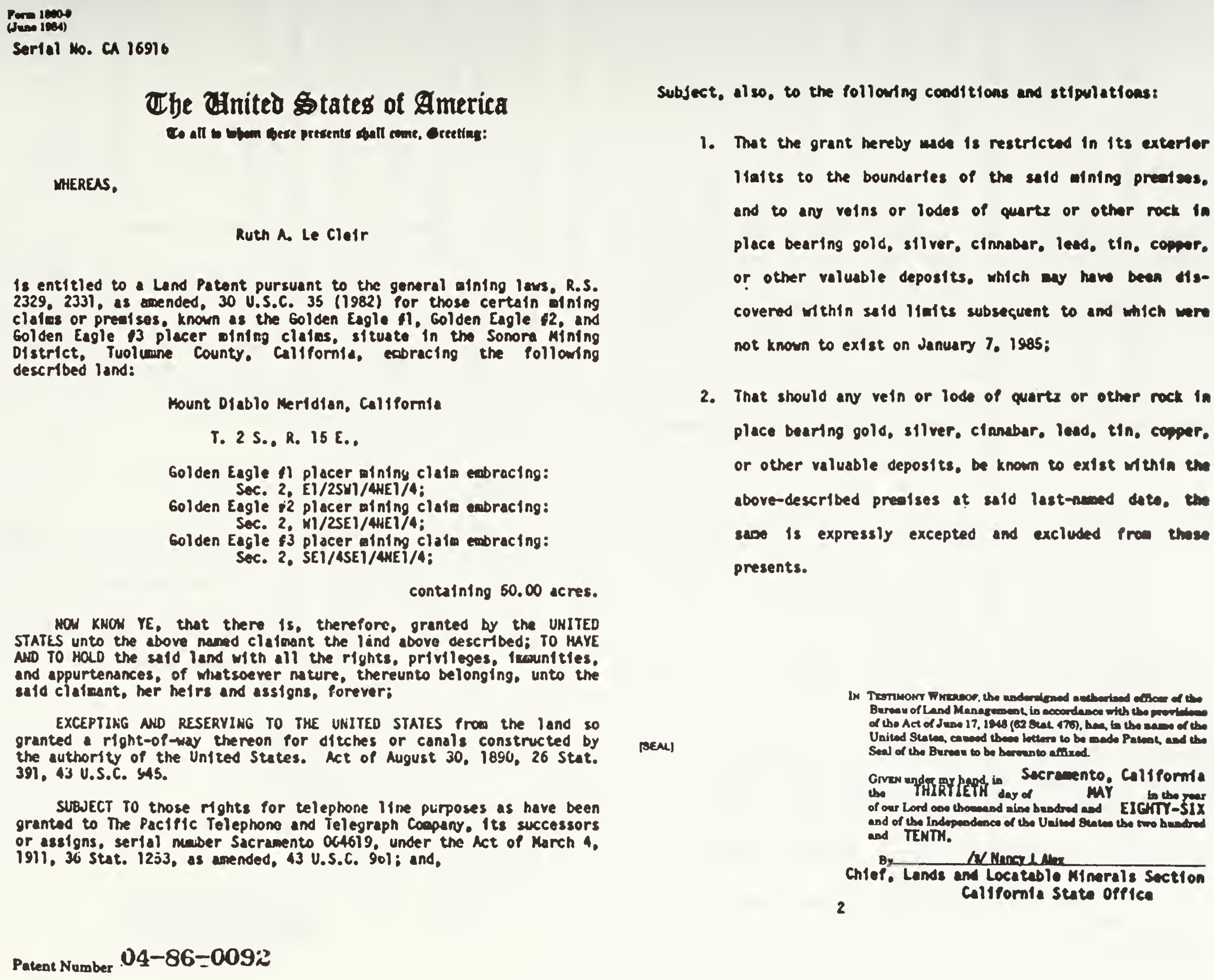
GIVEN under my hand, in Sacramento, California the EIGHTH day of APRIL in the year of our Lord one thousand nine hundred and EIGHTY-TWO and of the Independence of the United States the two hundred and SIXTH.

By Harold R. Dietz
Acting Chief, Lands Section
Branch of Lands and Minerals Operations
California State Office

Patent Number 04-82-0037

2

D-2 Mineral Patent for Mill Sites with Right-of-Way, Leasable Mineral, and California Desert Conservation Area Reservations



Form 1860-9
(June 1984)

Serial No. CA 16916

The United States of America

To all to whom these presents shall come, Greeting:

WHEREAS,

Ruth A. Le Clair

is entitled to a Land Patent pursuant to the general mining laws, R.S. 2329, 2331, as amended, 30 U.S.C. 35 (1982) for those certain mining claims or premises, known as the Golden Eagle #1, Golden Eagle #2, and Golden Eagle #3 placer mining claims, situate in the Sonora Mining District, Tuolumne County, California, embracing the following described land:

Mount Diablo Meridian, California

T. 2 S., R. 15 E.,

Golden Eagle #1 placer mining claim embracing:
Sec. 2, E1/2SW1/4NE1/4;
Golden Eagle #2 placer mining claim embracing:
Sec. 2, W1/2SE1/4NE1/4;
Golden Eagle #3 placer mining claim embracing:
Sec. 2, SE1/4SE1/4NE1/4;

containing 60.00 acres.

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES unto the above named claimant the land above described; TO HAVE AND TO HOLD the said land with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant, her heirs and assigns, forever;

EXCEPTING AND RESERVING TO THE UNITED STATES from the land so granted a right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

SUBJECT TO those rights for telephone line purposes as have been granted to The Pacific Telephone and Telegraph Company, its successors or assigns, serial number Sacramento 064619, under the Act of March 4, 1911, 36 Stat. 1253, as amended, 43 U.S.C. 961; and,

Patent Number 04-86-0092

Subject, also, to the following conditions and stipulations:

1. That the grant hereby made is restricted in its exterior limits to the boundaries of the said mining premises, and to any veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, which may have been discovered within said limits subsequent to and which were not known to exist on January 7, 1985;

2. That should any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, be known to exist within the above-described premises at said last-named date, the same is expressly excepted and excluded from these presents.

[SEAL]

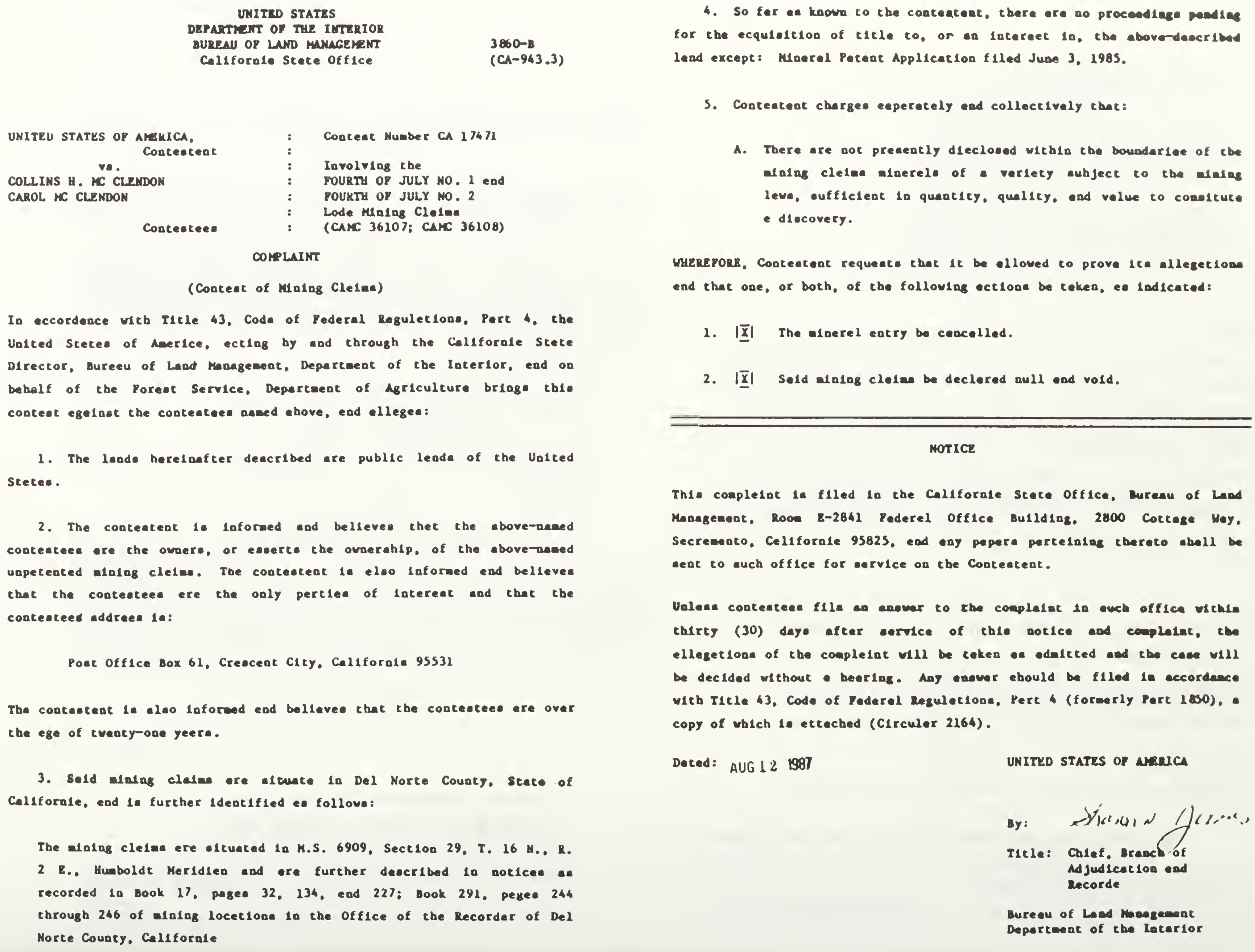
IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat. 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in Sacramento, California the THIRTIETH day of MAY in the year of our Lord one thousand nine hundred and EIGHTY-SIX and of the Independence of the United States the two hundred and TENTH.

By /s/ Nancy J. Alex
Chief, Lands and Locatable Minerals Section
California State Office

2

D-3 Mineral Patent for Placer Mining Claims with Right-of-Way and Veins or Lodes Reservations



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
California State Office

3860-B
(CA-943.3)

UNITED STATES OF AMERICA, : Contest Number CA 17471
Contestant :
vs. : Involving the
COLLINS H. MC CLENDON : FOURTH OF JULY NO. 1 and
CAROL MC CLENDON : FOURTH OF JULY NO. 2
: Lode Mining Claims
Contestees : (CAMC 36107; CAMC 36108)

COMPLAINT

(Contest of Mining Claims)

In accordance with Title 43, Code of Federal Regulations, Part 4, the United States of America, acting by and through the California State Director, Bureau of Land Management, Department of the Interior, and on behalf of the Forest Service, Department of Agriculture brings this contest against the contestees named above, and alleges:

1. The lands hereinafter described are public lands of the United States.

2. The contestant is informed and believes that the above-named contestees are the owners, or asserts the ownership, of the above-named unpatented mining claims. The contestant is also informed and believes that the contestees are the only parties of interest and that the contestees address is:

Post Office Box 61, Crescent City, California 95531

The contestant is also informed and believes that the contestees are over the age of twenty-one years.

3. Said mining claims are situate in Del Norte County, State of California, and is further identified as follows:

The mining claims are situated in M.S. 6909, Section 29, T. 16 N., R. 2 E., Humboldt Meridian and are further described in notices as recorded in Book 17, pages 32, 134, and 227; Book 291, pages 244 through 246 of mining locations in the Office of the Recorder of Del Norte County, California

4. So far as known to the contestant, there are no proceedings pending for the acquisition of title to, or an interest in, the above-described land except: Mineral Patent Application filed June 3, 1985.

5. Contestant charges separately and collectively that:

A. There are not presently disclosed within the boundaries of the mining claims minerals of a variety subject to the mining laws, sufficient in quantity, quality, and value to consitute a discovery.

WHEREFORE, Contestant requests that it be allowed to prove its allegations and that one, or both, of the following actions be taken, as indicated:

1. ☒ The mineral entry be cancelled.

2. ☒ Said mining claims be declared null and void.

NOTICE

This complaint is filed in the California State Office, Bureau of Land Management, Room E-2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, and any papers pertaining thereto shall be sent to such office for service on the Contestant.

Unless contestees file an answer to the complaint in such office within thirty (30) days after service of this notice and complaint, the allegations of the complaint will be taken as admitted and the case will be decided without a hearing. Any answer should be filed in accordance with Title 43, Code of Federal Regulations, Part 4 (formerly Part 1850), a copy of which is attached (Circular 2164).

Dated: AUG 12 1987

UNITED STATES OF AMERICA

By:

Title: Chief, Branch of
Adjudication and
Records

Bureau of Land Management
Department of the Interior

D-4 Complaint (Contest of Mining Claims) for Contest Number CA 17471

Mineral Application No. CACA 24571, California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825 JUL 07 1989

Notice is hereby given that Gold Fields Mining Corporation, a Delaware corporation authorized to transact business in California as GFMC EXPLORATION - CALIFORNIA, INC., whose address is 200 Union Boulevard, Suite 500, Lakewood, Colorado 80228 has made application for patent to the GOLD HILL 1 lode mining claim, Mineral Survey No. 6933, Secs. 5 and 8, T. 13 S., R. 19 E., SBM, in the Mesquite Mining District, Imperial County, California described as follows: Beginning at Cor. No. 1, GOLD HILL 1, from which the 1/4 cor. of secs. 8 and 9, T. 13 S., R. 19 E., SBM, bears S. 39° 27' 24" E., 3564.91 ft.; thence S. 24° 53' E., 1482.66 ft. to Cor. No. 2 of said lode; thence S. 66° 39' W., 600.22 ft. to Cor. No. 3 of said lode; thence N. 24° 50' W., 1482.67 ft. to Cor. No. 4 of said lode; thence N. 66° 39' E., 599.14 ft. to Cor. No. 1 of said lode and place of beginning. The location notice and amendments thereto are recorded in Book 152, pg. 482; Book 202, pg. 480 and Book 1492, pgs. 1223 and 1224 in the Official Records of Imperial County, California. The conflicting and adjoining claims as shown on the plat of survey are the Golden Annex A, D and 6 lode mining claims of MS No. 6900 and MILS 107 and 108 mill sites of MS No. 6923. Rose M. Fairbanks, Chief, Locatable Minerals Section, Branch of Adjudication and Records.

FIRST PUBLICATION: July 19, 1989

LAST PUBLICATION: September 13, 1989

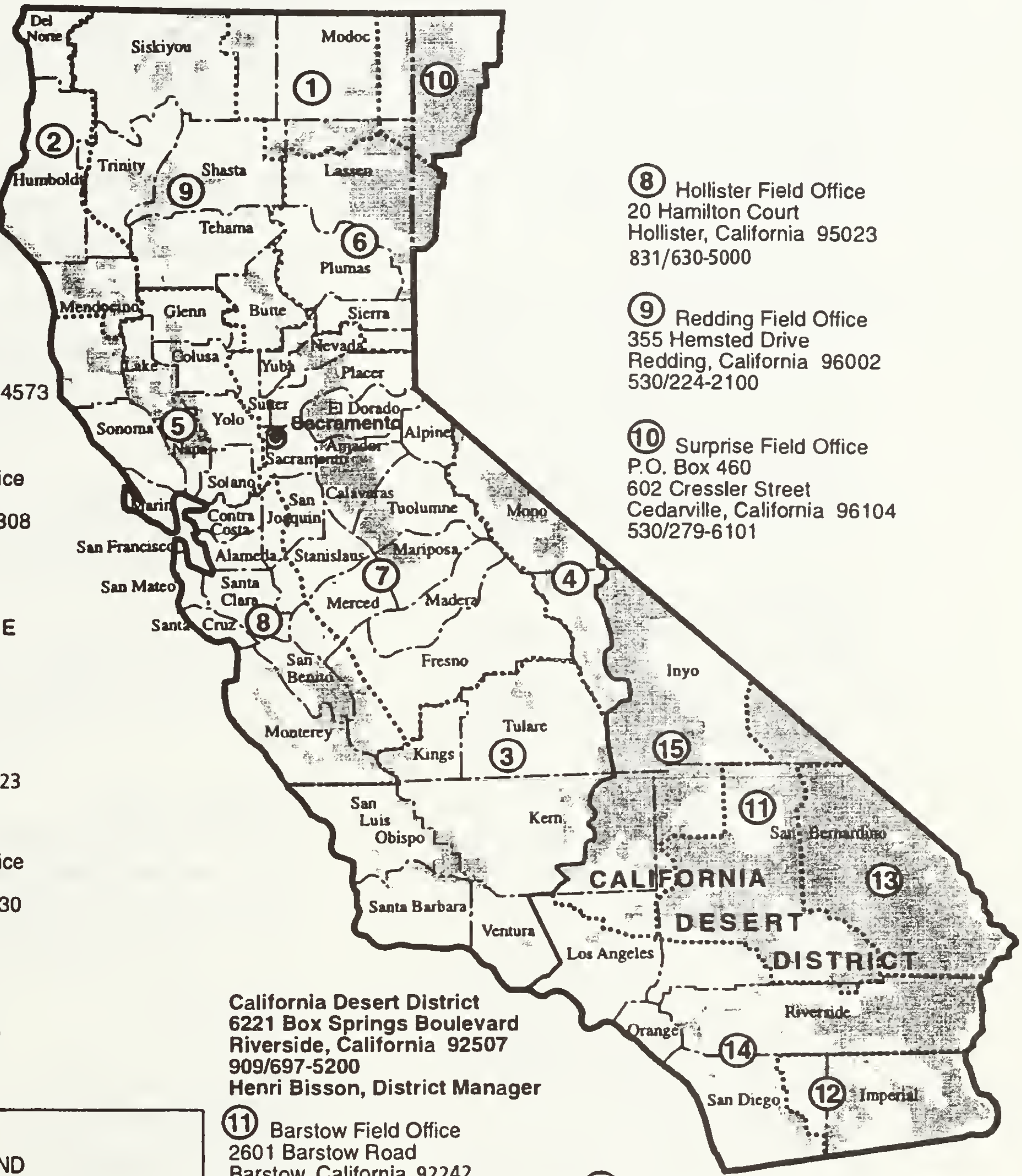
Published in the designated newspaper, The Brawley News, Brawley, California.

D-5 Public Announcement
for Mineral Patent Application CACA 24571

SOURCES
AND
ADDITIONAL INFORMATION

Bureau of Land Management California Jurisdictions

California State Office, 2800 Cottage Way
Sacramento, California 95825-1886
Public Information Office (916) 978-4400



① Alturas Field Office
708 W. 12th Street
Alturas, California 96101
530/233-4666

② Arcata Field Office
1695 Heindon Road
Arcata, California 95521-4573
707/825-2300

③ Bakersfield Field Office
3801 Pegasus Ave.
Bakersfield, California 93308
661/391-6000

④ Bishop Field Office
785 North Main St., Suite E
Bishop, California 93514
760/872-4881

⑤ Ukiah Field Office
2550 N. State Street
Ukiah, California 95482-3023
707/468-4000

⑥ Eagle Lake Field Office
2950 Riverside Drive
Susanville, California 96130
530/257-0456

⑦ Folsom Field Office
63 Natoma Street
Folsom, California 95630
916/985-4474

⑧ Hollister Field Office
20 Hamilton Court
Hollister, California 95023
831/630-5000

⑨ Redding Field Office
355 Hemsted Drive
Redding, California 96002
530/224-2100

⑩ Surprise Field Office
P.O. Box 460
602 Cressler Street
Cedarville, California 96104
530/279-6101

California Desert District
6221 Box Springs Boulevard
Riverside, California 92507
909/697-5200
Henri Bisson, District Manager

⑪ Barstow Field Office
2601 Barstow Road
Barstow, California 92242
760/252-6000

⑫ El Centro Field Office
1661 S. 4th Street
El Centro, California 92243
760/337-4400

⑬ Needles Field Office
101 West Spikes Road
Needles, California 92363
760/326-7000

⑭ Palm Springs-South Coast Field Office
690 W. Garnet Avenue
P.O. Box 2000
North Palm Springs, California 92258
760/251-4800

⑮ Ridgecrest Field Office
300 S. Richmond Road
Ridgecrest, California 93555
760/384-5400

LEGEND

▨ PUBLIC LANDS
—— DISTRICT BOUNDARY
•••••••••• FIELD OFFICE BOUNDARIES
◉ STATE OFFICE

BLM Offices in California

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Alaska State Office
Bureau of Land Management
222 W. 7th Avenue #13
Anchorage, AK 99513-7599
(907) 271-5960

Arizona State Office
Bureau of Land Management
222 North Central Avenue
Phoenix, AZ 85004-2203
[mail:] P.O. Box 555
Phoenix, AZ 85001-0555
(602) 417-9200

California State Office
Bureau of Land Management
2800 Cottage Way
Sacramento, CA 95825-1886
(916) 978-4400

Colorado State Office
Bureau of Land Management
2850 Youngfield Street
Lakewood, CO 80215-7076
(303) 239-3600

Eastern States Office
Bureau of Land Management
7450 Boston Boulevard
Springfield, VA 22153
(703) 440-1600

Idaho State Office
Bureau of Land Management
1387 S. Vinnell Way
Boise, ID 83709-1657
(208) 373-4000

Montana State Office
(+ North Dakota, South Dakota)
Bureau of Land Management
5001 Southgate Drive
Billings, MT 59101
[mail:] P.O. Box 36800
Billings, MT 59107-6800
(406) 896-5000

Nevada State Office
Bureau of Land Management
1340 Financial Boulevard
Reno, NV 89502
[mail:] P.O. Box 12000
Reno, NV 89502-0006
(775) 861-6400

New Mexico State Office
(+ Oklahoma, Kansas, Texas)
Bureau of Land Management
1474 Rodeo Road
Sante Fe, NM 87505
[mail:] P.O. Box 27115
Sante Fe, NM 87502-1005
(505) 438-7400

Oregon State Office
(+ Washington State)
Bureau of Land Managment
1515 S.W. 5th Avenue
Portland, OR 97201
[mail:] P.O. Box 2965
Portland, OR 97208
(503) 952-6001

Utah State Office
Bureau of Land Management
324 South State Street, Suite 301
Salt Lake City, UT 84111-2303
[mail:] P.O. Box 45155
Salt Lake City, UT 84145-0155
(801) 539-4001

Wyoming State Office
Bureau of Land Management
5353 Yellowstone Road
Cheyenne, WY 82003
[mail:] P.O. Box 1828
Cheyenne, WY 82003
(307) 775-6256

Nebraska
Bureau of Land Management
1101 Washington Boulevard
Newcastle, WY 82701-2972
(307) 746-4453

National Forest Offices
AND RANGER DISTRICTS

U.S. Department of Agriculture
National Forest Service (USFS)
Pacific Southwest Regional Office (Region 5)
1323 Club Drive
Vallejo, CA 94592
(707) 562-8737

Angeles National Forest
Supervisor's Office
701 N. Santa Anita Avenue
Arcadia, CA 91006
(626) 574-5200

San Gabriel River Ranger District
110 N. Wabash Avenue
Glendora, CA 91740
(626) 335-1251

Los Angeles River Ranger District
4600 Oak Grove Drive
Flintridge, CA 91011
(818) 790-1151

Little Tujunga Work Center
12371 Little Tujunga Canyon
San Fernando, CA 91342
(818) 899-1900

Santa Clara/Mojave Rivers Ranger District
30800 Bouquet Canyon Road
Saugus, CA 91350
(661) 296-9710

Mojave Work Center
29835 Valyermo Road
Valyermo, CA 933563
(661) 944-2187

Chilao Visitor Center
Star Route 2
La Canada, CA 91011
(626) 796-5541 (Sat & Sun)

Grassy Hollow Visitor Center
Highway 2
Wrightwood, CA 92397
(626) 821-6737 (Sat & Sun)

Mt. Baldy Schoolhouse Visitor Center
Mt. Baldy Road
Mt. Baldy, CA 91759
(909) 982-2829 (Daily)

Cleveland National Forest
Supervisor's Office
10845 Rancho Bernardo Road, Suite 200
San Diego, CA 92127-2107
(619) 673-6180

Descano Ranger District
3348 Alpine Boulevard
Alpine, CA 91901
(619) 445-6235

Trabusco Ranger District
1147 E. Sixth Street
Corona, CA 91719
(909) 736-1811

Palomar Ranger District
1634 Black Canyon Road
Ramona, CA 92065
(760) 788-0250

S-3 National Forests in California - U.S. Forest Service (page 1)

Eldorado National Forest
Supervisor's Office
100 Forni Road
(530) 622-5061

Pacific Ranger District
7887 Highway 50
Pollock Pines, CA 95726-9602
(530) 644-2349

Amador Ranger District
26820 Silver Drive & Highway 88
Star Route 3
Pioneer, CA 95666
(209) 295-4251

Georgetown Ranger District
7800 Wentworth Springs Road
Georgetown, CA 95634
(916) 333-4312

Eldorado Information Center
3070 Camino Heights Drive
Camino, CA 95709
(530) 644-6048

Placerville Ranger District
4260 Eight Mile Road
Camino, CA 95709
(530) 644-2324

Placerville Nursery
2375 Fruitridge Road
Camino, CA 95709
(530) 622-9600 or -9601

Inyo National Forest
Supervisor's Office
873 N. Main Street
Bishop, CA 93514
(760) 873-2400

White Mountain Ranger Station
798 N. Main Street
Bishop, CA 93514
(760) 873-2500

Mono Basin Scenic Area Visitor Center
P.O. Box 429
Lee Vining, CA 93541
(760) 647-3044 (Open all year)

Mt. Whitney Ranger Station
P.O. Box 8
Lone Pine, CA 93545
(760) 876-6200

InterAgency Visitor Center
P.O. Box R
Lone Pine, CA 93545-2017
(760) 876-6222 (Open all year)

Mammoth Ranger Station
P.O. Box 148
Mammoth Lakes, CA 93546
(760) 924-5500

Klamath National Forest
Supervisor's Office
1312 Fairlane Road
Yreka, CA 96097-9549
(530) 842-6131

Gooseneck Ranger District
37805 Highway 97
Macdoel, CA 96058
(530) 398-4391

Salmon River & Scott River Ranger District
11263 N. Highway 3
Fort Jones, CA 96032-9702
(530) 468-5351

Ukonom Ranger District
Highway 96 & Ishi Pise Road
P.O. Drawer 410
Orleans, CA 95556-0410
(530) 627-3291

Happy Camp Ranger District
63822 Highway 96
P.O. Box 377
Happy Camp, CA 96039-0377
(530) 493-2243

Lassen National Forest
Supervisor's Office
55 South Sacramento Street
Susanville, CA 96130
(530) 257-2151

Eagle Lake Ranger District
477-050 Eagle Lake Road
Susanville, CA 96130
(530) 257-4188 or -2151

Almanor Ranger District
P.O. Box 767
Chester, CA 96020
(530) 258-2141

Hat Creek Ranger District
P.O. Box 220, Highway 299 E
Fall River Mills, CA 96028
(530) 336-5521

Los Padres National Forest
Supervisor's Office
6144 Calle Real
Goleta, CA 93117
(805) 683-6711

Monterey Ranger District
406 South Mildred
King City, CA 93930
(831) 385-5434

Ojai Ranger District
1190 East Ojai Avenue
Ojai, CA 93023
(805) 646-4348

Santa Lucia Ranger District
1616 North Carlotti Drive
Santa Maria, CA 93454
(805) 925-9538

Mount Pinos Ranger District
34580 Lockwood Valley Road
Frazier Park, CA 93225
(661) 245-3731

Santa Barbara Ranger District
3505 Paradise Road
Santa Barbara, CA 93105
(805) 967-3481

Mendocino National Forest
Supervisor's Office
825 N. Humboldt Avenue
Willows, CA 95988
(530) 934-3316

Covelo Ranger District
78150 Covelo Road
Covelo, CA 95428
(707) 983-6118

Upper Lake Ranger District
10025 Elk Mountain Road
Upper Lake, CA 95485
(707) 275-2361

Genetic Resource Center
2741 Cramer Lane
Chico, CA 95928
(530) 895-1176 or -1177

Gridstone Ranger District
(SAME INFORMATION AS FOR SUPERVISOR'S OFFICE)

Modoc National Forest
Supervisor's Office
800 W. 12th Street
Alturas, CA 96101
(530) 233-5811

Big Valley Ranger District
P.O. Box 159
Adin, CA 96006
(530) 299-3215

Doublehead Ranger District
P.O. Box 369
Tulelake, CA 96134
(530) 667-2246

Warner Mountain Ranger District
P.O. Box 220
Cedarville, CA 96104
(530) 279-6116

Devil's Garden Ranger District
(SAME INFORMATION AS FOR SUPERVISOR'S OFFICE)

Plumas National Forest
Supervisor's Office
159 Lawrence Street
P.O. Box 11500
Quincy, CA 95971
(530) 283-2050

Feather River Ranger District
875 Mitchell Avenue
Oroville, CA 95965-4699
(530) 534-6500

Mt. Hough Ranger District
39696 Highway 70
Quincy, CA 95971
(530) 283-0555

Beckwourth Ranger District
Mohawk Ranger Station
Mohawk Road
P.O. Box 7
Blairsden, CA 96130
(530) 836-2575

San Bernardino National Forest
Supervisor's Office
1824 S. Commerce Center Circle
San Bernardino, CA 92408-3430
(909) 383-5588

Arrowhead Ranger Station
28104 Highway 18
P.O. Box 350
Skyforest, CA 92385
(909) 337-2444

San Gorgonio Ranger District
34701 Mill Creek Road
Mentone, CA 92359
(909) 794-1123

Cajon Ranger Station
1209 Lytle Creek Roaad
Lytle Creek, CA 92358
(909) 887-2576

Big Bear Ranger District
North Shore Drive
P.O. Box 290
Fawnskin, CA 92333
(909) 866-3437

San Jacinto Ranger District
Idyllwild Ranger Station
54270 Pinecrest Avenue
P.O. Box 518
Idyllwild, CA 92549
(909) 659-2117

Sequoia National Forest
Supervisor's Office
900 W. Grand Avenue
Porterville, CA 93257
(559) 784-1500

Cannell Meadow Ranger District
Black Rock Ranger District
105 Whitney Road
P.O. Box 9
Kernville, CA 93238
(760) 376-3781

Greenhorn Ranger District
4875 Ponderosa Drive
P.O. Box 3810
Lake Isabella, CA 93240
(760) 379-5646

Hot Springs Ranger District
43474 Parker Pass Drive
Route 4, Box 548
California Hot Springs, CA 93207
(661) 548-6503

Hume Lake Ranger District
35860 E. Kings Canyon Road
Dunlap, CA 93621
(559) 338-2251

Tule Ranger District
32588 Highway 190
Springville, CA 93265
(559) 539-2607

Bakersfield Visitor Center
3801 Pisqasus Drie
Bakersfield, CA 93308
(661) 391-6088

Shasta Trinity National Forest

Supervisor's Office
2400 Washington Avenue
Redding, CA 96001
(530) 244-2978

McCloud Ranger District
2019 Forest Road
P.O. Box 1620
McCloud, CA 96057
(530) 964-2184

Weaverville Ranger District
210 Main Street
P.O. Box 1190
Weaverville, CA 96093
(530) 623-2121

Hayfork Ranger District
Trinity Street
P.O. Box 159
Hayfork, CA 96041
(530) 628-5227

Big Bar Ranger District
Star Route 1, Box 10
Big Bar, CA 96010
(530) 623-6106

Northern California Service Center
6101 Airport Road
Redding, CA 96002
(530) 226-8010

Yolla Bolla Ranger District
2555 State Highway 36
Platina, CA 96067
(530) 352-4211

Mt. Shasta Ranger District
204 West Alma
Mt. Shasta, CA 96067
(530) 926-4511

Shasta Lake Ranger District
14225 Holiday Road
Redding, CA 96003
(530) 275-1589

Sierra National Forest

Supervisor's Office
1600 Tollhouse Road
Clovis, CA 93612
(559) 297-0706

Mariposa/Minarets Ranger District
57003 Road 226
P.O. Box 10
North Fork, CA 93643
(559) 877-2218

Kings River Ranger District
34849 Maxon Road
Sanger, CA 93657
(559) 855-8321

Pineridge Ranger District
P.O. Box 559
Prather, CA 93651
(559) 855-5360

Summer only:

High Sierra Ranger District
(209) 877-3138

Dinkey Creek
(209) 841-3404

Glover Meadow
(209) 877-3136

Eastwood
(209) 893-6611

Siskiyou National Forest
Supervisor's Office
200 NE Greenfield Road
P.O. Box 440
Grants Pass, OR 97528-0242
(541) 471-6500

Galice Ranger District
1465 NE Seventh Street
Grants Pass, OR 97526-1303
(541) 471-6500

Six Rivers National Forest
Supervisor's Office
1330 Bayshore Way
Eureka, CA 95501
(707) 441-3534

Gasquet Ranger District
Big Flat Station (summer only)
Smith River National Recreation Area
P.O. Box 228
Gasquet, CA 95543
(707) 457-3131

Mad River Ranger District
Zenia Fire Station
Star Route, Box 300
Bridgeville, CA 95526
(707) 574-6233

Orleans Ranger District
P.O. Box 410, Drawer B
Orleans, CA 95556
(530) 627-3291

Humboldt Nursery
4886 Cottage Grove Avenue
McKinleyville, CA 95521
(707) 839-3256

Salyer Fire Station
P.O. Box 68
Salyer, CA 95573
(530) 629-2114

Lower Trinity Ranger District
P.O. Box 68
Willow Creek, CA 95573
(530) 629-2118

Stanislaus National Forest
Supervisor's Office
19777 Greenley Road
Sonora, CA 95370
(209) 532-3671

Calaveras Ranger District
Highway 4
P.O. Box 500
Hathaway Pines, CA 95233
(209) 795-1381

Groveland Ranger District
24545 Highway 120
Groveland, CA 95321
(209) 962-7825

Mi-Wok Ranger District
Highway 108 E
P.O. Box 100
Mi-Wok Village, CA 95346
(209) 586-3234

Summit Ranger District
#1 Pinecrest Lake Road
Upper Highway 108
Pinecrest, CA 95364
(209) 965-3434

Tahoe National Forest
Supervisor's Office
631 Coyote Street
Nevada City, CA 95959
(530) 265-4531

Sierraville Ranger District
Highway 89
P.O. Box 95
Sierraville, CA 96126
(530) 994-3401

Truckee Ranger District
10342 Highway 89 North
Truckee, CA 96161
(530) 587-3558

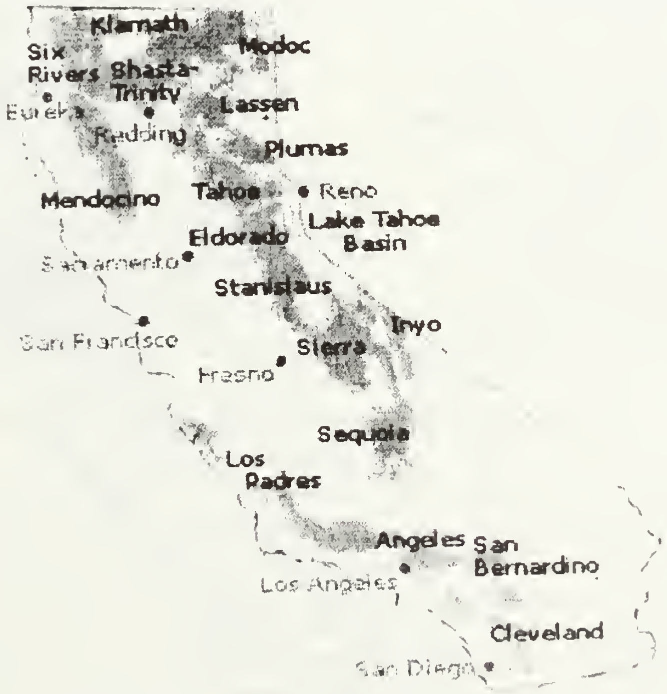
Lake Tahoe Basin Management District
870 Emerald Bay Road, Suite 1
South Lake Tahoe, CA 96150
(530) 573-2600

Nevada City Ranger District
631 Coyote Street
Nevada City, CA 95959
(530) 265-4531

Downieville Ranger District
North Yuba Ranger Station
15924 Highway 49
Comptonville, CA 95922-9707
(530) 288-3231

Foresthill Ranger District
22830 Foresthill Road
Foresthill, CA 95631
(530) 367-2224

Big Bend Visitor Center
I-80 at Rainbow-Big Bend exit
P.O. Box 830
Soda Springs, CA 95728-0830
(530) 426-3609



State Water Resources Control Board

901 P Street Sacramento, CA 95814
(916) 657-1247
FAX: (916) 657-1258

Regional Water Quality Control Boards
Office Locations

North Coast Regional Water Quality Control Board
(Region 1)
5550 Skylane Blvd - Suite A
Santa Rosa, CA 95403
(707) 576-2220
FAX: (707) 523-0135

San Francisco Bay Regional Water Quality Control Board
(Region 2)
1515 Clay Street, Suite 1400
Oakland, CA 94612
(510) 622-2300
FAX: (510) 622-2460

Central Coast Regional Water Quality Control Board
(Region 3)
81 Higuera St-Suite 200
San Luis Obispo, CA
93401-5427
(805) 549-3147
FAX: (805) 543-0397

Los Angeles Regional Water Quality Control Board
(Region 4)
320 West 4th Street, Suite 200
Monterey Park, CA 91754-2156
(213) 576-6600
FAX: (323) 266-7600

Central Valley Regional Water Quality Control Board
(Region 5)

Sacramento Office
3443 Routier Road, Suite A
Sacramento, CA 95827-3003
(916) 255-3000
FAX: (916) 255-3015

Fresno Office
3614 East Ashlan Avenue
Fresno, CA 93726
(559) 445-5116
FAX: (209) 445-5910

Redding Office
415 Knollcrest Drive
Redding, CA 96002
(530) 224-4845
FAX: (530) 224-4857

Lahontan Regional Water Quality Control Board
(Region 6)

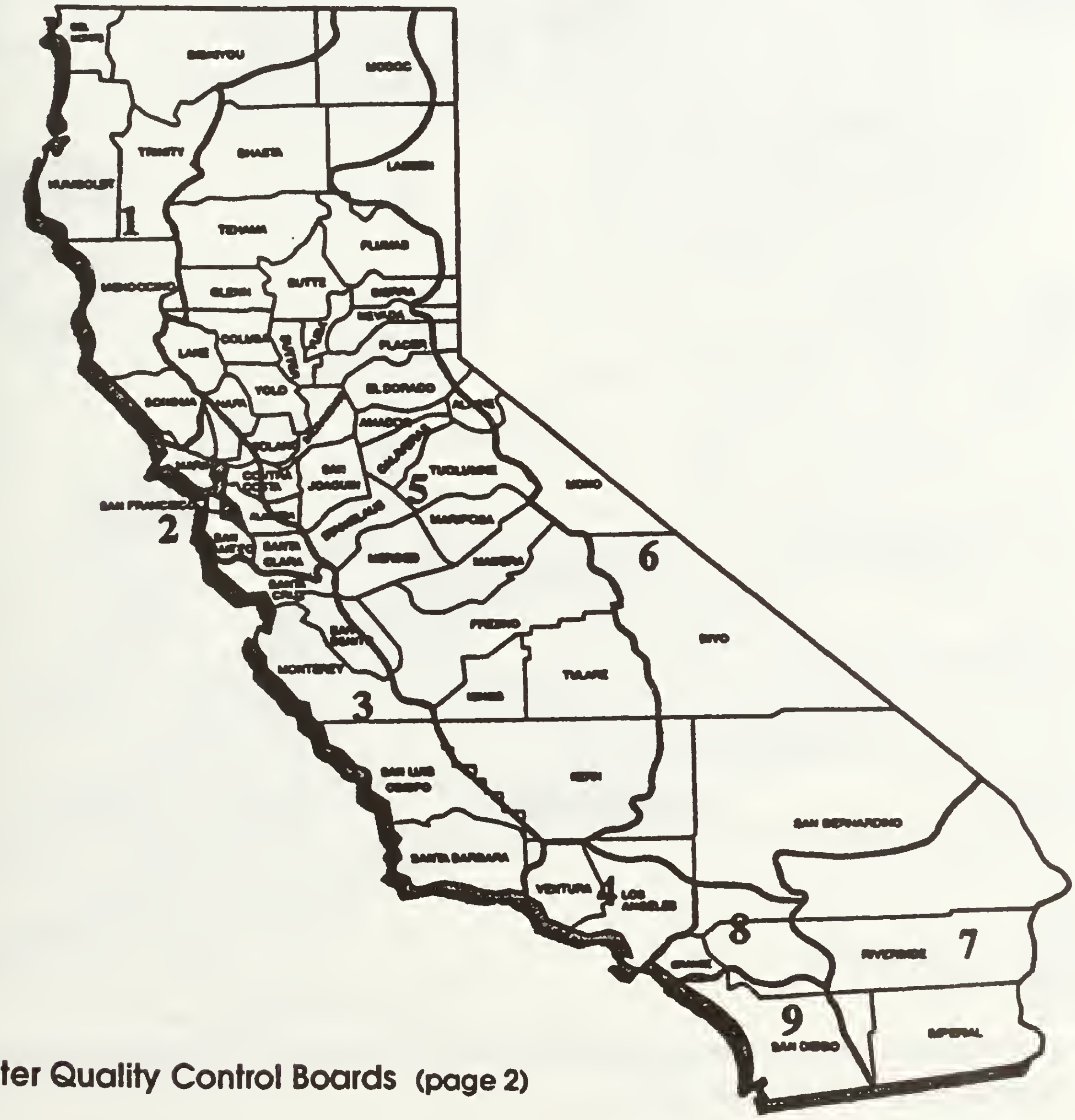
South Lake Tahoe Office
2501 Lake Tahoe Blvd.
South Lake Tahoe, CA
96150
(530) 542-5400
FAX: (530) 544-2271

Victorville Office
15428 Civic Dr.-Suite
100
Victorville, CA 92392
(760) 241-6583
FAX: (760) 241-7308

Colorado River Basin Regional Water Quality Control Board (Region 7)
73-720 Fred Waring Drive,
Suite100
Palm Desert, CA 92260
(760) 346-7491
FAX: (760) 341-6820

Santa Ana Regional Water Quality Control Board (Region 8)
3737 Main Street,
Suite 500
Riverside, CA 92501-3339
(909) 782-4130
FAX: (909) 781-6288

San Diego Regional Water Quality Control Board (Region 9)
9771 Clairemont Mesa
Blvd,
Suite A
San Diego, CA
92124-1331
(619) 467-2952
FAX: (619) 571-6972



S-4 Water Quality Control Boards (page 2)

California Department of Fish and Game

State Headquarters

☆ **Resources Building**
1416 Ninth Street, 12th Floor
Sacramento, CA 95814
(916) 653-7664

Regional Headquarters

☆ **Northern California - North Coast Region**
601 Locust Street
Redding, CA 96001
(530) 225-2300

☆ **Sacramento Valley - Central Sierra Region**
1701 Nimbus Road
Rancho Cordova, CA 95670
(916) 358-2900

☆ **Central Coast Region**
7329 Silverado Trail
Napa, CA 94558
(707) 944-5500

Mailing Address:
P. O. Box 47
Yountville, CA 94599

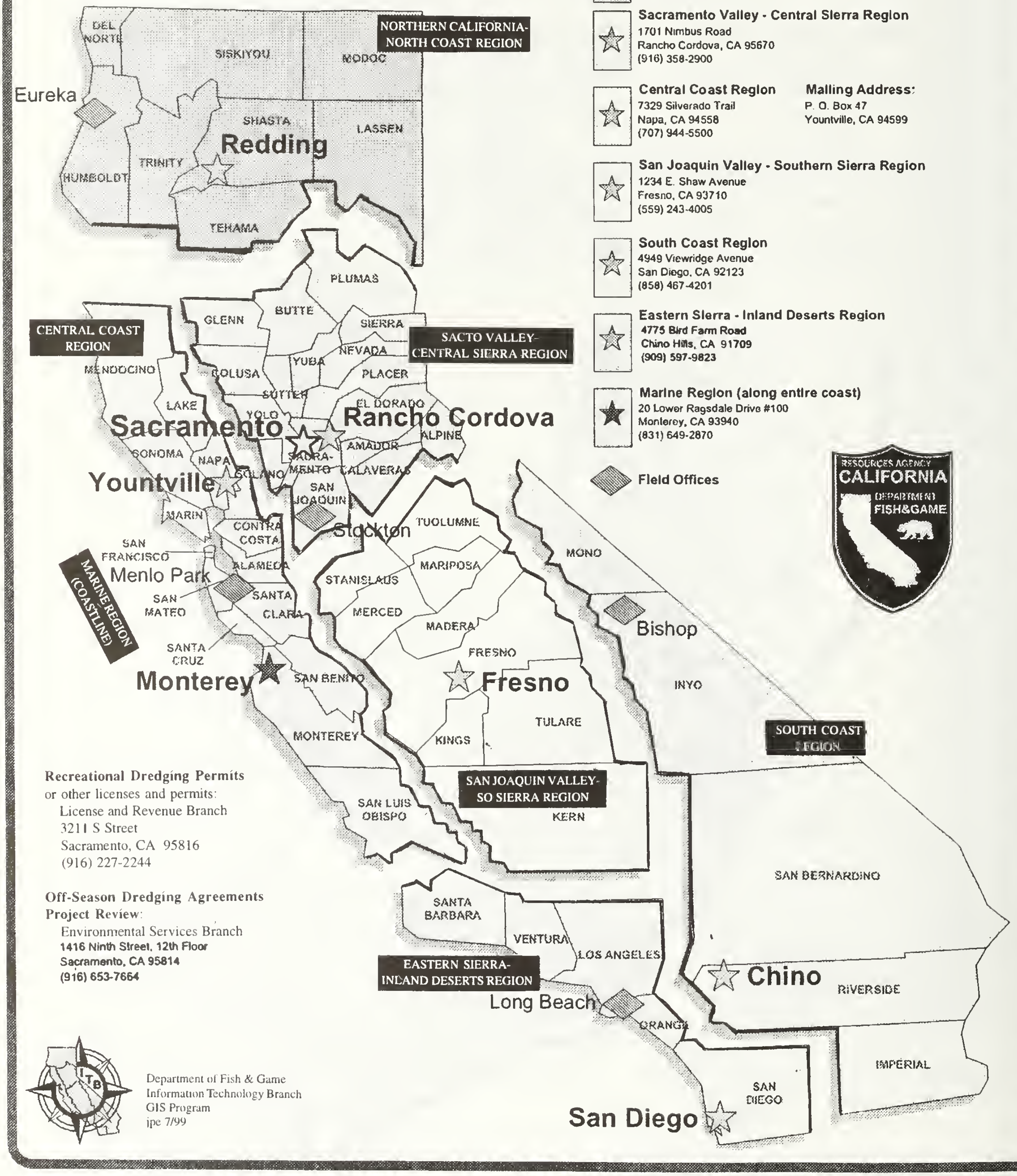
☆ **San Joaquin Valley - Southern Sierra Region**
1234 E. Shaw Avenue
Fresno, CA 93710
(559) 243-4005

☆ **South Coast Region**
4949 Viewridge Avenue
San Diego, CA 92123
(858) 467-4201

☆ **Eastern Sierra - Inland Deserts Region**
4775 Bird Farm Road
Chino Hills, CA 91709
(909) 597-9823

★ **Marine Region (along entire coast)**
20 Lower Ragsdale Drive #100
Monterey, CA 93940
(831) 649-2870

◆ **Field Offices**



Recreational Dredging Permits
or other licenses and permits:
License and Revenue Branch
3211 S Street
Sacramento, CA 95816
(916) 227-2244

Off-Season Dredging Agreements
Project Review:
Environmental Services Branch
1416 Ninth Street, 12th Floor
Sacramento, CA 95814
(916) 653-7664

Department of Fish & Game
Information Technology Branch
GIS Program
ipe 7/99

US Army Corps of Engineers
Sacramento District
1325 J Street
Sacramento, CA 95814-2922

Regulatory Permit Program

Corps of Engineers Regulatory Program

Water is one of our nation's most valuable resources. It is becoming increasingly important that we protect the quality of our inland waters and wetlands for the use and benefit of future generations.

This brochure discusses the regulatory program of the U.S. Army Corps of Engineers: what it is, how it began, how it may affect you, and what you as a concerned American can do to help.

If you are planning work in a river, stream, or wetland, a Corps permit may be required.

The program provides for the consideration of all concerns of the public-environmental, social, and economic-in the Corps' decision-making process to either issue or deny permits. As part of its responsibility to protect water quality, the Corps of Engineers Section 404 permit program extends to many areas that were not regulated prior to the Clean Water Act.

The purpose of the Section 404 program is to insure that the physical, biological, and chemical quality of our nation's water is protected from irresponsible and unregulated discharges of dredged or fill material that could permanently alter or destroy these valuable resources.

History

The U.S. Army Corps of Engineers has been involved in regulating certain activities in the nation's water since 1890. Until 1968, the primary thrust of the Corps' regulatory program was the protection of navigation. As a result of several new laws and judicial decisions, the program evolved to one that considers the full public interest by balancing the favorable impacts against the detrimental impacts.

What Work Requires a Permit?

Section 10 of the Rivers and Harbors Act of 1899 requires approval prior to the accomplishment of any work in or over navigable waters of the United States, or which affects the course, location, condition or capacity of such waters. Typical activities requiring Section 10 permits are:

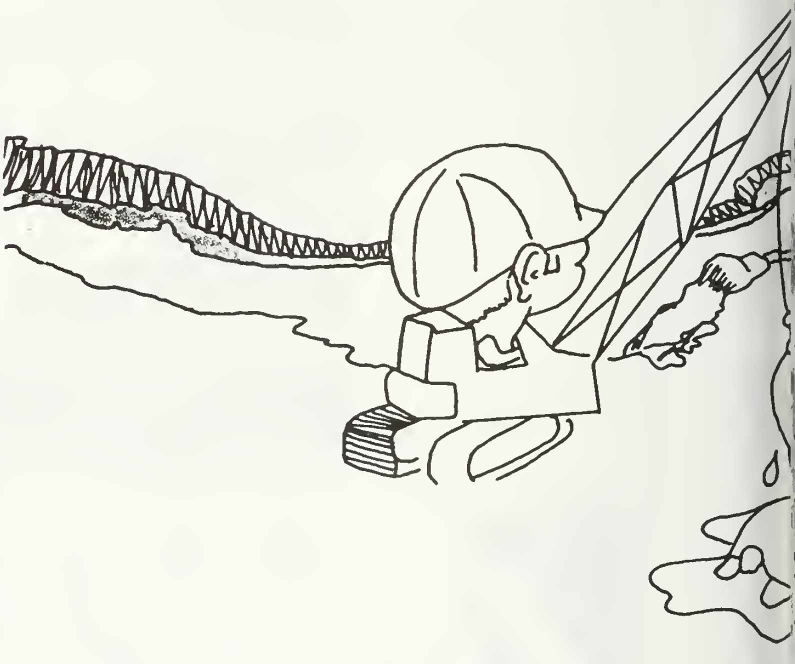
- Construction of piers, wharves, bulkheads, dolphins, marinas, ramps, floats intake structures, and cable or pipeline crossings.
- Dredging and excavation.

Section 404 of the Clean Water Act requires approval prior to discharging dredged or fill material into the waters of the United States. Typical activities requiring Section 404 permits are:

- Depositing of fill or dredged material in waters of the U.S. or adjacent wetlands.
- Site development fills for residential, commercial, or recreational developments.
- Construction of revetments, groins, breakwaters, levees, dams, dikes, and weirs.
- Placement of riprap and road fills.

Who Should Obtain a Permit?

Any person, firm, or agency (including Federal, state, and local government agencies) planning to work in Navigable Waters of the United States, or dump or place dredged or fill material in waters of the United States, must first obtain a permit from the Corps of Engineers. Permits, licenses, variances, or similar authorization may also be required by other Federal, state and local statutes.



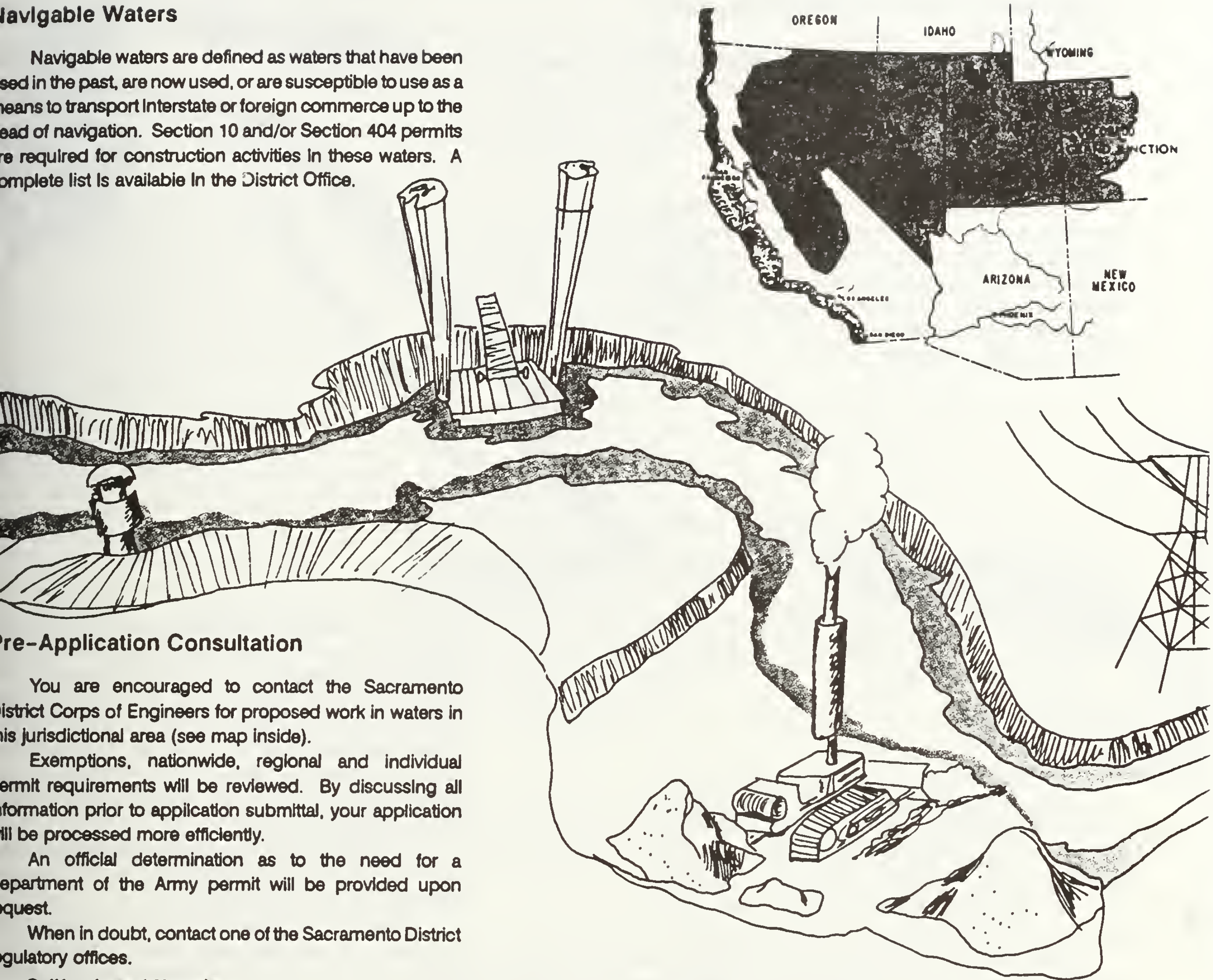
Waters of the United States

Waters of the United States include essentially all surface waters such as all navigable waters and their tributaries, all interstate waters and their tributaries, all wetlands adjacent to these waters, and all impoundments of these waters. "Wetlands" are areas characterized by growth of wetland vegetation (bulrush, cattails, rushes, sedges, willows, pickleweed, and iodine bush) where the soil is saturated during a portion of the growing season or the surface is flooded during some part of most years. Wetlands generally include swamps, marshes, bogs and similar areas.

The landward regulatory limit for non-tidal waters (in the absence of adjacent wetlands) is the ordinary high water mark. The ordinary high water mark is the line on the shores established by the fluctuations of water and indicated by physical characteristics such as a clear natural line impressed on the bank; shelving; changes in the character of the soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

lavigable Waters

Navigable waters are defined as waters that have been sed in the past, are now used, or are susceptible to use as a neans to transport interstate or foreign commerce up to the ead of navigation. Section 10 and/or Section 404 permits re required for construction activities in these waters. A omplete list is available in the District Office.



're-Application Consultation

You are encouraged to contact the Sacramento istrict Corps of Engineers for proposed work in waters in nis jurisdictional area (see map inside).

Exemptions, nationwide, regional and individual ermit requirements will be reviewed. By discussing all iformation prior to application submittal, your application ill be processed more efficiently.

An official determination as to the need for a epartment of the Army permit will be provided upon quest.

When in doubt, contact one of the Sacramento District gulatory offices.

California and Nevada
Sacramento District Regulatory Section
1325 J Street
Sacramento, California 95814-2922
Telephone (916) 557-5250

Utah
Utah Regulatory Office
1403 South 600 West, Suite A
Bountiful, Utah 84010
Telephone (801) 295-8380

Western Colorado
Wayne N. Aspinal Federal Building
400 Rood Avenue, Room 142
Grand Junction, Colorado 81501-2563
Telephone (303) 243-1199

TYPES OF PERMITS
Individual Permits

Individual permits are issued following a full public interest review of an individual application for a Department of the Army permit. A public notice is distributed to all known interested persons. After evaluating all comments and information received, final decision on the application is made.

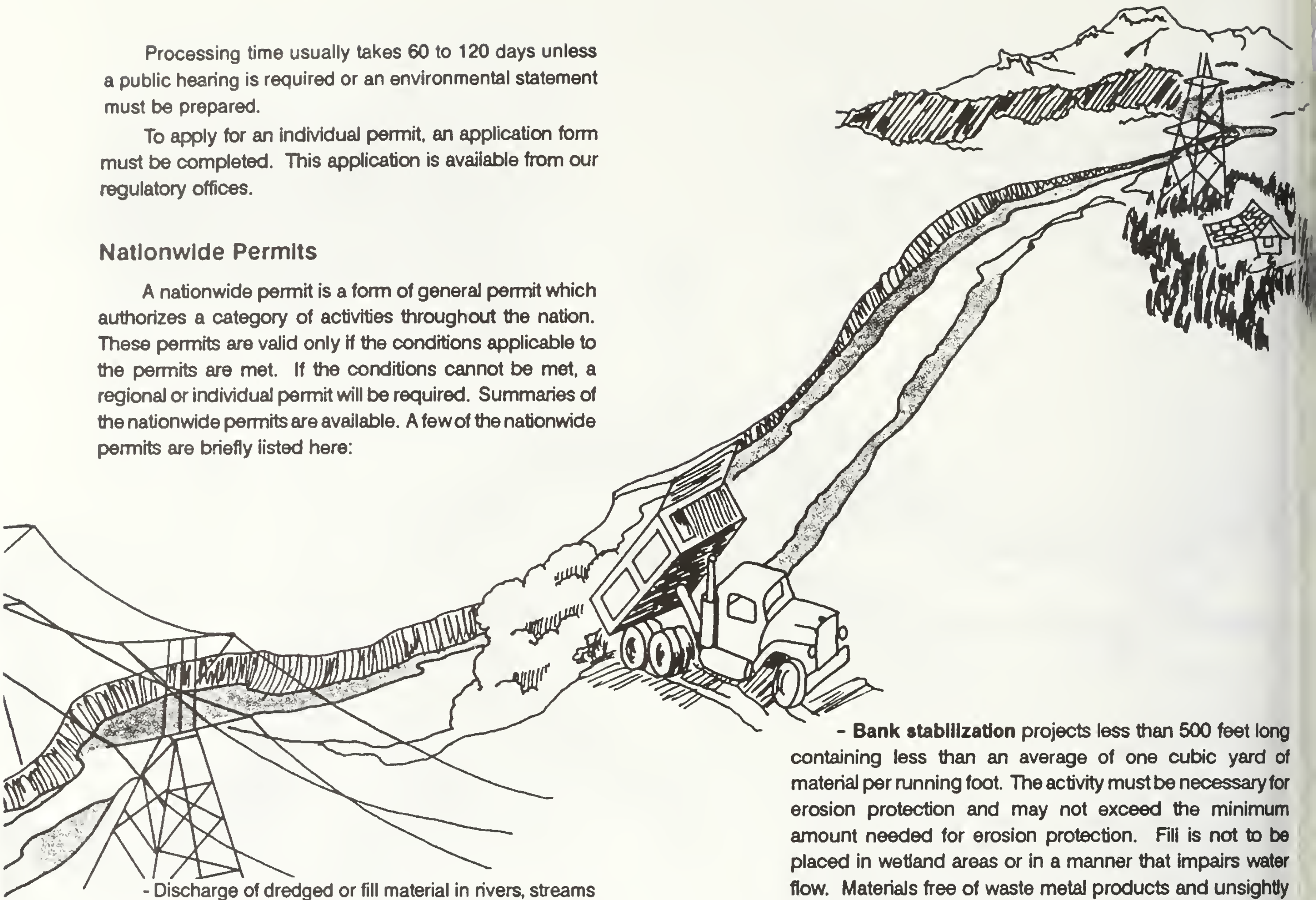
The permit decision is generally based on the outcome of a public interest balancing process where the benefits of the project are balanced against the detriments. A permit will be granted unless the proposal is found to be contrary to the public interest.

Processing time usually takes 60 to 120 days unless a public hearing is required or an environmental statement must be prepared.

To apply for an individual permit, an application form must be completed. This application is available from our regulatory offices.

Nationwide Permits

A nationwide permit is a form of general permit which authorizes a category of activities throughout the nation. These permits are valid only if the conditions applicable to the permits are met. If the conditions cannot be met, a regional or individual permit will be required. Summaries of the nationwide permits are available. A few of the nationwide permits are briefly listed here:



- Discharge of dredged or fill material in rivers, streams or lakes located **above the headwaters** or in **closed basins.** Use of this nationwide permit is not allowed when 10 acres or more of waters of the United States, including wetlands are filled, flooded, excavated or drained as a result of the project. Discharges affecting 1 to 10 acres require **advanced written notification** to the District Engineer.

Headwaters means the point where the average annual stream flow is 5 cubic feet per second (cfs). For an intermittent stream, the headwater point is where the stream flows at or above 5 cfs 50 percent of the time. Closed basins involve waters that are not part of a tributary system to interstate waters or navigable waters of the United States.

- **Repair, rehabilitation, or replacement** of a structure or fill which was previously authorized and currently serviceable. The structure or fill must not be significantly changed.

- **Utility lines** placed across a waterway. Discharge of bedding and backfill material is permitted if bottom contours are not changed.

- **Single projects of less than 10 cubic yards** of fill. Piecemeal work is not authorized.

- **Bank stabilization** projects less than 500 feet long containing less than an average of one cubic yard of material per running foot. The activity must be necessary for erosion protection and may not exceed the minimum amount needed for erosion protection. Fill is not to be placed in wetland areas or in a manner that impairs water flow. Materials free of waste metal products and unsightly debris must be used and the activity must be a single, complete project.

- **Concrete** poured into tightly sealed forms or cells if the concrete is a structural member not otherwise regulated.

- **Minor road crossing fills** (temporary or permanent) that place less than 200 cubic yards or fill below the ordinary high water mark. The crossing must be bridged or culverted to prevent restriction of high flows. The fill placed in waters of the US is limited to no more than 1/3 acre.

Regional Permits

Regional permits are issued by the District Engineer for a general category of activities when (1) the activities are similar in nature and cause minimal environmental impact (both individually and cumulatively), and (2) the regional permit reduces duplication of regulatory control by State and Federal agencies.

Contact one of the Sacramento District Regulatory offices for information regarding regional permits in your area.

California Division of Mines and Geology

LOS ANGELES
107 S. Broadway (at First Street)
Room 1065
Los Angeles, CA 90012
(213) 620-3560

SACRAMENTO
Division Headquarters
1416 Ninth St., Room 1341
Sacramento, CA 95814
(916) 445-5716

U.S. Geological Survey

USGS Public Inquiries Office
345 Middlefield Road, MS 33
Menlo Park, CA 94025
(415) 329-4390

NOTE: Aerial photographs (vertical black-and-white photographs of varying scale) and U.S. Geological Survey 9"x9" semi-gloss contact prints, where available, can be ordered from:

NCIC-W, USGS
345 Middlefield Road, MS 32
Menlo Park, CA 94025
(415) 328-4390

County Recorders in California

Alameda
1225 Fallon St., Rm. 100
Oakland, CA 94612
(510) 272-6363

Alpine
P.O. Box 217
Markleeville, CA 96120
(530) 694-2286

Amador
108 Court St.
Jackson, CA 95642
(209) 223-6468

Butte
25 County Center Dr.
Oroville, CA 95965
(530) 538-7691

Calaveras
Government Center
San Andreas, CA 95249
(209) 754-6372

Colusa
547 Market St.
Colusa, CA 95932
(530) 458-4660

Contra Costa
P.O. Box 350
Martinez, CA 94553
(510) 646-2360

Del Norte
457 F St.
Crescent City, CA 95531
(707) 464-7216

El Dorado
360 Fair Ln.
Placerville, CA 96667
(530) 621-5490

Fresno
P.O. Box 766
Fresno, CA 93712
(209) 488-3471

Glenn
P.O. Box 391
Willows, CA 95988
(530) 934-6412

Humboldt
825 - 5th St., Rm. 108
Eureka, CA 95501
(707) 445-7593

Imperial
940 W. Main St, Ste. 106
El Centro, CA 92243-2864
(760) 339-4272

Inyo
P.O. Box F
Independence, CA 93526
(760) 878-0222

Kern
1655 Chester Ave.
Bakersfield, CA 93301
(805) 861-2181

Kings
Government Center
1400 W. Lacy Blvd.
Hanford, CA 93230
(209) 582-3211

Lake
255 N. Forbes St.
Lakeport, CA 95453
(707) 263-2293

Lassen
Courthouse, Lassen St.
Susanville, CA 96130
(530) 251-8234

Los Angeles
P.O. Box 115
Los Angeles, CA 90053
(213) 974-3211

Madera
209 W. Yosemite
Madera, CA 93637
(209) 675-7724

Marin
P.O. Box C, Civic Center
San Rafael, CA 94913
(415) 499-6092

Mariposa
P.O. Box 35
Mariposa, CA 95338
(209) 966-5719

Mendocino
P.O. Box 148
Ukiah, CA 95482
(707) 463-4376

Merced
2222 M St.
Merced, CA 95340
(209) 385-7627

Modoc
204 Court St.., Rm. 107
Alturas, CA 96101
(530) 233-6221

Mono
P.O. Box 537
Bridgeport, CA 93517
(760) 932-5240

Monterey
P.O. Box 570
Salinas, CA 93902
(408) 755-5041

Napa
P.O. Box 298
Napa, CA 94559
(707) 253-4246

Nevada
P.O. Box 6100
Nevada City, CA 95959
(530) 265-1221

Orange
P.O. Box 238
Santa Ana, CA 92702
(714) 834-2500

S-8 County Recorders in California's 58 Counties

Placer
P.O. Box 5228
Auburn, CA 95604-5228
(530) 823-4621

Plumas
P.O. Box 10706
Quincy, CA 95971
(530) 283-6380

Riverside
P.O. Box 751
Riverside, CA 92502
(909) 275-6200

Sacramento
P.O. Box 839
Sacramento, CA 95804
(916) 874-6334

San Benito
Courthouse, 440 - 5th St., Rm. 206
Hollister, CA 950223
(408) 636-4029

San Bernardino
670 E. Gilbert St., 2nd Fl.
San Bernardino, CA 92415-0910
(909) 387-8306

San Diego
P.O. Box 1750
San Diego, CA 92112-4147
(619) 236-3771

San Francisco
City Hall, Rm. 167
San Francisco, CA 94103
(415) 554-4176

San Joaquin
P.O. Box 1968
Stockton, CA 95201-1968
(209) 468-3939

San Luis Obispo
County Government Center, #102
San Luis Obispo, CA 93408
(805) 781-5088

San Mateo
Hall of Justice & Records
Redwood City, CA 94063
(415) 363-4711

Santa Barbara
P.O. Drawer CC
Santa Barbara, CA 93102
(805) 566-2250

Santa Clara
70 W. Hedding St.
First Floor, East Wing
San Jose, CA 95110
(408) 299-2481

Santa Cruz
701 Ocean St., Rm. 230
Santa Cruz, CA 95060
(408) 425-2217

Shasta
Courthouse, Rm. 102
Redding, CA 96001
(530) 225-5671

Sierra
P.O. Box Drawer D
Downieville, CA 95936
(530) 289-3295

Siskiyou
P.O. Box 8
Yreka, CA 96097
(530) 842-8060

Solano
580 W. Texas St.
Fairfield, CA 94533
(707) 421-6290

Sonoma
P.O. Box 6124
Santa Rosa, CA 95406-0124
(707) 527-2651

Stanislaus
P.O. Box 1008
Modesto, CA 95353
(209) 525-6416

Sutter
466 - 2nd St.
Yuba City, CA 95991
(530) 741-7134

Tehama
P.O. Box 250
Red Bluff, CA 96080
(530) 527-3350

Trinity
P.O. Box 1258
Weaverville, CA 96093
(530) 623-1215

Tulare
Courthouse, Rm. 201
County Civic Center
Visalia, CA 93291
(209) 733-6377

Tuolumne
2 S. Green St.
Sonora, CA 95370
(209) 533-5531

Ventura
800 S. Victoria Ave.
Ventura, CA 93009
(805) 654-2291

Yolo
P.O. Box 1820
Woodland, CA 95695
(530) 666-8130

Yuba
215 - 5th St.
Marysville, CA 95901
(530) 741-6342

S-8 County Recorders in California (page 2)

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT MINERAL SURVEYOR ROSTER

Alphabetical Listing

Roster issued: February 17, 1998
Appointment expiration: December 31, 2001

Doyle G. Abrahamson
11511 North Donley Drive
Parker, Colorado 80138
Phone: (303) 751-0741

David M. Albert
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LAWS AND REGULATIONS

LR-1 Multiple Use; Mining (Public Law 167)

(43 CFR 3710 - 3714)

PART 3710—PUBLIC LAW 167; ACT OF JULY 23, 1955

Subpart 3710—Public Law 167; Act of July 23, 1955: General

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Subpart 3710—Public Law 167; Act of July 23, 1955: General

§3710.0-3 Authority.

The Act of July 23, 1955 (69 Stat. 367, 30 U.S.C. sec. 601), was enacted "to amend the Act of July 31, 1947 (61 Stat. 681) and the mining laws to provide for multiple use of the surface of the same tracts of the public lands, and for other purposes." The regulations in this part are intended to implement only sections 3 to 7, inclusive, of said Act hereinafter more fully identified. The word "Act" when used in this subpart refers to the Act of July 23, 1955. Sections 1 and 2 thereof relate specifically to the Materials Act of July 31, 1947.

[35 FR 9731, June 13, 1970]

Subpart 3711—Common Varieties

§3711.1 Provisions of act.

(a) The Act in section 3 provides: A deposit of common varieties of sand, stone, gravel, pumice, pumicite or cinders shall not be deemed a valuable mineral deposit within the meaning of the mining laws of the United States so as to give effective validity to any mining claim hereafter located under such mining laws: *Provided, however,* That nothing herein shall affect the validity of any mining location based upon discovery of some other mineral occurring in or in association with such a deposit. "Common varieties" as used in this act does not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value and does not include so-called "block pumice" which occurs in nature in pieces having one dimension of two inches or more.

(b) "Common varieties" includes deposits which, although they may have value for use in trade, manufacture, the sciences, or in the mechanical or ornamental arts, do not possess a distinct, special economic value for such use over and above the normal uses of the general run of such deposits. Mineral materials which occur commonly shall not be deemed to be "common varieties" if a particular deposit has distinct and special properties making it commercially valuable for use in a manufacturing, industrial, or processing operation. In the determination of commercial value, such factors may be considered as quality and quantity of the deposit, geographical location, proximity to market or point of utilization, accessibility to transportation, requirements for reasonable reserves consistent with usual industry practices to serve existing or proposed manufacturing, industrial, or processing facilities, and feasible methods for mining and removal of the material. Limestone suitable for use in the production of cement, metallurgical or chemical grade limestone, gypsum, and the like are not "common varieties." This subsection does not relieve a claimant from any requirements of the mining laws.

[35 FR 9731, June 13, 1970]

Subpart 3712—Proceedings Under the Act

SOURCE: 35 FR 9732, June, 13, 1970, unless otherwise noted.

§3712.1 Restriction on use of unpatented mining claims.

(a) The Act in section 4 provides:

> Any mining claim hereafter located under the mining laws of the United States shall not be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto.
>
> Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States). Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees, and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land: *Provided, however*, That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto: *Provided, further*, That if at any time the locator requires more timber for his mining operations than is available to him from the claim after disposition of timber therefrom by the United States, subsequent to the location of the claim, he shall be entitled, free of charge, to be supplied with timber for such requirements from the nearest timber administered by the disposing agency which is ready for harvesting under the rules and regulations of that agency and which is substantially equivalent in kind and quantity to the timber estimated by the disposing agency to have been disposed of from the claim: *Provided, further*, That nothing in this act shall be construed as affecting or intended to affect or in any way interfere with or modify the laws of the States which lie wholly or in part westward of the ninety-eighth meridian relating to the ownership, control, appropriation, use, and distribution of ground or surface waters within any unpatented mining claim.
>
> Except to the extent required for the mining claimant's prospecting, mining or processing operations and uses reasonably incident thereto, or for the construction of buildings or structures in connection therewith, or to provide clearance for such operations or uses, or to the extent authorized by the United States, no claimant of any mining claim hereafter located under the mining laws of the United States shall, prior to issuance of patent therefor, sever, remove, or use any vegetative or other surface resources thereof which are subject to management or disposition by the United States under the preceding subsection (b). Any severance or removal of timber which is permitted under the exceptions of the preceding sentence, other than severance or removal to provide clearance, shall be in accordance with sound principles of forest management.

(b) The locator of an unpatented mining claim subject to the Act is limited in his use of the claim to those uses specified in the act, namely prospecting, mining, or processing operations and uses reasonably incident thereto. He is forbidden to use it for any other purpose such, for example, as for filling stations, curio shops, cafes, tourist, or fishing and hunting camps. Except as such interference may result from uses permitted under the act, the locator of an unpatented mining claim subject to the act may not interfere with the right of the United States to manage the vegetative and other surface resources of the land, or use it so as to block access to or egress from adjacent public land, or use Federal timber for purposes other than those permitted under the act, or block access to water needed in grazing use of the national forests or other public lands, or block access to recreational areas, or prevent agents of the Federal Government from crossing the locator's claim in order to reach adjacent land for purposes of managing wild-game habitat or improving fishing streams so as to thwart the public harvest and proper management of fish and game resources on the public lands generally, both on located and on adjacent lands.

(c) Mining claims located prior to the date of the act will be subject to the Act where determination has been made pursuant to section 5 of the Act, that the locator's surface rights are limited as provided in section 4 of the Act, or where the owners have waived and relinquished all rights under section 6 of the Act, which are contrary to or in conflict with the limitations and restrictions specified as to hereafter located unpatented mining claims in section 4 of the Act. See §3714.3 as to effect on existing rights.

(d) On mining claims subject to the provisions of the Act, timber may be used by the claimants only for the purposes permitted under the Act, and, except where timber is removed to provide clearance for operations or uses permitted under the Act, such timber must be cut in accordance with sound principles of forest management. When timber on a mining claim is disposed of by the Government subsequent to the location of the claim, free use of timber by the mining claimant of like kind and quantity from the nearest timber administered by the disposing agency is provided for, but only when and to the extent that is required for their mining operations and only in kind and quantity substantially equivalent to the timber removed from the claim by the Government. Any such timber may be cut and removed only under the rules and regulations of the administering agency. Regulations governing applications and issuance of permits for the use of such timber on public lands administered by the Bureau of Land Management are contained in part 5510 of this chapter.

§3712.2 Publication of notice.

§3712.2-1 Request for publication of notice to mining claimant.

(a) The Act in the first paragraph of section 5(a) provides as follows:

> The head of a Federal department or agency which has the responsibility for administering surface resources of any lands belonging to the United States may file as to such lands in the office of the Secretary of the Interior, or in such office as the Secretary of the Interior may designate, a request for publication of notice to mining claimants, for determination of surface rights, which request shall contain a description of the lands covered thereby, showing the section or sections of the public land surveys which embrace the lands covered by such request, or if such lands are unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument.
>
> The "request for publication of notice to mining claimants" authorized to be filed by the above-quoted portion of the act can be filed by the Federal department or agency which has the responsibility for administering surface resources of the lands to which the requested notice would relate. It must describe the land covered by the request by section, township, range, and meridian or, if the land is unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands, or by a metes and bounds description of such area with a tie to a United States mineral monument.

(b) A request for publication of notice under this subsection shall be filed with the proper office of the Bureau of Land Management. No request for publication may include lands in more than one district.

§3712.2-2 Evidence necessary to support a request for publication.

(a) The second and third paragraphs of section 5(a) of the Act provide in detail for the filing by the head of a Federal department or agency of certain evidence in support of the request for publication of the notice referred to in §3712.2-1 as follows:

> The filing of such request for publication shall be accompanied by an affidavit or affidavits of a person or persons over twenty-one years of age setting forth that the affiant or affiants have examined the lands involved in a reasonable effort to ascertain whether any person or persons were in actual possession of or engaged in the working of such lands or any part thereof, and, if no person or persons were found to be in actual possession of or engaged in the working of said lands or any part thereof, on the date of such examination, setting forth such fact, or, if any person or persons were so found to be in actual possession or engaged in such working on the date of such examination, setting forth the name and address of each such person, unless affiant shall have been unable through reasonable inquiry to obtain information as to the name and address of any such person, in which event the affidavit shall set forth fully the nature and results of such inquiry.
>
> The filing of such request for publication shall also be accompanied by the certificate of a title or abstract company, or of a title abstractor, or of an attorney, based upon such company's abstractor's or attorney's examination of those instruments which are shown by the tract indexes in the county office of record as affecting the lands described in said request, setting forth the name of any person disclosed by said instruments to have an interest in said lands under any unpatented mining claim heretofore located, together with the address of such person if such address is disclosed by such instruments of record. "Tract indexes" as used herein shall mean those indexes, if any, as to surveyed lands identifying instruments as affecting a particular legal subdivision of the public land surveys, and as to unsurveyed lands identifying instruments as affecting a particular probable legal subdivision according to a projected extension of the public land surveys.

(b) This part of the Act requires the filing of an affidavit which may be made by any person or persons over twenty-one years of age who have examined the lands. It must show whether any person or persons were "in actual possession of or engaged in the working of such lands (the lands described in the request for publication of notice) or any part thereof" and, if they were, the name and address of each such person must be given if it can be learned by reasonable inquiry and if it cannot be so learned, the affidavit must show in detail what inquiry or inquiries were made to obtain each such name and address. No definition of the terms "in actual possession" or "engaged in the working of said lands" will be attempted here, but the affidavits should recite what evidences of occupancy or workings were found. The request for publication must also be accompanied by a certificate executed as provided in the third paragraph of section 5(a) and containing the information required by that paragraph to be furnished. If there are no tract indexes, as defined in the Act, in the county office of record affecting the lands described in the request for publication, a certificate executed as provided in the said third paragraph of section 5(a) to that effect must be furnished.

§3712.2–3 Contents of published notice.

Section 5(a) of the Act specifies in detail what the published notice shall contain, as follows:

> Such notice shall describe the lands covered by such request, as provided heretofore, and shall notify whomever it may concern that if any person claiming or asserting under, or by virtue of, any unpatented mining claim heretofore located, rights as to such lands or any part thereof, shall fail to file in the office where such request for publication was filed (which office shall be specified in such notice) and within one hundred and fifty days from the date of the first publication of such notice (which date shall be specified in such notice), a verified statement which shall set forth, as to such unpatented mining claim—
>
> (1) The date of location;
>
> (2) The book and page of recordation of the notice or certificate of location;
>
> (3) The section or sections of the public land surveys which embrace such mining claims; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument;
>
> (4) Whether such claimant is a locator or purchaser under such location; and
>
> (5) The name and address of such claimant and names and addresses so far as known to the claimant of any other person or persons claiming any interest or interests in or under such unpatented mining claim: such failure shall be conclusively deemed (i) to constitute a waiver and relinquishment by such mining claimant of any right, title or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of this Act as to hereafter located unpatented mining claims, and (ii) to constitute a consent by such mining claimant that such mining claim, prior to issuance of patent therefor, shall be subject to the limitations and restrictions specified in section 4 of this Act as to hereafter located unpatented mining claims, and (iii) to preclude thereafter, prior to issuance of patent, any assertion by such mining claimant of any right or title to or interest in or under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of this Act as to hereafter located unpatented mining claims.

§3712.2–4 Publication.

If the request for publication and the accompanying papers conform to the requirements of the Act, the Authorized officer or the Director, as may be appropriate, at the expense of the requesting department or agency, shall cause notice to mining claimants to be published in a newspaper having general circulation in the county in which the lands involved are situated. If the notice is published in a daily newspaper it shall be published in the Wednesday issue for nine consecutive weeks, if in a weekly paper, in nine consecutive issues, or if in a semi-weekly or tri-weekly paper, in the issue of the same day of each week for nine consecutive weeks.

§3712.2–5 Proof of publication.

After the period of newspaper publication has expired, the department or agency requesting the publication shall obtain from the office of the newspaper or publication a sworn statement that the notice was published at the time and in accordance with the requirements under the regulations of this part, and shall file such sworn statement in the office where the Request for Publication was filed.

§3712.2–6 Service of notice.

The last paragraph of section 5(a) of the Act provides with respect to service of the notice by personal delivery or by registered mail, as follows:

> Within fifteen days after the date of first publication of such notice, the department or agency requesting such publication (1) shall cause a copy of such notice to be personally delivered to or to be mailed by registered mail addressed to each person in possession or engaged in the working of the land whose name and address is shown by an affidavit filed as aforesaid, and to each person who may have filed, as to any lands described in said notice, a request for notices, as provided in subsection (d) of this section 5, and shall cause a copy of such notice to be mailed by registered mail to each person whose name and address is set forth in the title or abstract company's or title abstractor's or attorney's certificate filed as aforesaid, as having an interest in the lands described in said notice under any unpatented mining claim heretofore located, such notice to be directed to such person's address as set forth in such certificate; and (2) shall file in the office where said request for publication was filed an affidavit showing that copies have been so delivered or mailed.

§3712.2–7 Service of copies; failure to comply.

If the department or agency requesting publication under these regulations shall fail to comply with the requirements of section 5(a) of the Act as to the personal delivery or mailing of a copy of the published notice to any person, the publication of such notice shall be deemed wholly ineffectual as to that person or as to the rights asserted by that person and the failure of that person to file a verified statement, as provided in such notice shall in no manner affect, diminish, prejudice or bar any rights of that person.

§3712.3 Failure of claimant to file verified statement.

If any claimant under any unpatented mining claim located prior to July 23, 1955, which embraces any of the lands described in any notice published in accordance with the regulations in this part shall fail to file a verified statement, as specified in such published notice (See §3712.2-4), within one hundred and fifty days from the date of the first publication of such notice, such failure shall be conclusively deemed except as otherwise provided in §3712.2-7.

(a) To constitute a waiver and relinquishment by such mining claimant of any right, title or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of the Act as to unpatented mining claims located after its enactment.

(b) To constitute a consent by such mining claimant that such mining claim, prior to issuance of patent therefor, be subject to the limitations and restrictions specified in section 4 of the Act as to unpatented mining claims located after its enactment.

(c) To preclude thereafter prior to the issuance of patent any assertion by such mining claimant of any right or title to or interest in or under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of the Act as to unpatented mining claims located after its enactment.

Subpart 3713—Hearings

SOURCE: 35 FR 9734, June 13, 1970, unless otherwise noted.

§3713.1 Hearing procedures.

The procedures with respect to notice of such a hearing and the conduct thereof, and in respect to appeals, shall follow the appeals and contests of the Department of the Interior and the Bureau of Land Management (part 1850 of this title) relating to contests or protests affecting public lands of the United States so far as they are applicable.

§3713.2 Hearing: Time and place.

If any verified statement shall be filed by a mining claimant then the administrative law judge or the Director, as may be appropriate, shall fix a time and place for a hearing to determine the validity and effectiveness of any right or title to or interest in or under such mining claim which the mining claimant may assert contrary to or in conflict with the limitations or restrictions specified in section 4 of the Act as to unpatented mining claims located after its enactment. The administrative law judge shall notify the department or agency and all mining claimants entitled to notice as the result of the filing of such verified statement of the time and place of such hearing at least 30 days in advance thereof. The notice of hearing shall contain a statement specifying the issues upon which evidence will be submitted at the hearing. Such hearing shall be held in the county where the lands in question, or parts thereof, are located unless the mining claimant agrees otherwise.

§3713.3 Stipulation between parties.

Where verified statements are filed asserting rights to an aggregate of more than twenty mining claims, any single hearing shall be limited to a maximum of twenty mining claims unless the parties affected shall otherwise stipulate and as many separate hearings shall be set as shall be necessary to comply with section 5(c) of the Act. If at any time prior to a hearing the department or agency requesting publication of notice and any person filing a verified statement pursuant to such notice shall so stipulate, then to the extent so stipulated, but only to such extent, no hearing shall be held with respect to rights asserted under that verified statement, and to the extent defined by the stipulation the rights asserted under that verified statement shall be deemed to be unaffected by the notice published pursuant to that request.

§3713.4 Effect of decision affirming a mining claimant's rights.

(a) If the final decision rendered in any hearing held pursuant to section 5 of the Act shall affirm the validity and effectiveness of any mining claimant's right or interest under a mining claim asserted in accordance with the provisions of that section, then no subsequent proceedings under section 5 of the act shall have any force or effect upon the so-affirmed right or interest of such mining claimant under such mining claim.

(b) If it is finally determined as the result of such a hearing that the claimant has no right or title to or interest in or under his mining claim which he may assert contrary to or in conflict with the limitations and restrictions specified in section 4 of the act, then those limitations and restrictions shall apply with respect to such mining claim.

Subpart 3714—Rights of Mining Claimants

SOURCE: 35 FR 9734, June 13, 1970, unless otherwise noted.

§3714.1 Recording by mining claimant of request for copy of notice.

Section 5(d) of the Act provides as follows:

> Any person claiming any right under or by virtue of any unpatented mining claim heretofore located and desiring to receive a copy of any notice to mining claimants which may be published as above provided in subsection (a) of this section 5, and which may affect lands embraced in such mining claim, may cause to be filed for record in the county office of record where the notice of certificate of location of such mining claim shall have been recorded, a duly acknowledged request for a copy of any such notice. Such request for copies shall set forth the name and address of the person requesting copies, and shall also set forth, as to each heretofore located unpatented mining claim under which such person asserts rights—
>
> (1) The date of location;
>
> (2) The book and page of the recordation of the notice or certificate of location; and
>
> (3) The section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument. Other than in respect to the requirements of subsection (a) of this section 5 as to personal delivery or mailing of copies of notices and in respect to the provisions of subsection (e) of this section 5, no such request for copies of published notices and no statement or allegation in such request and no recordation thereof shall affect title to any mining claim or to any land or be deemed to constitute constructive notice to any person that the person requesting copies has, or claims, any right, title, or interest in or under any mining claim referred to in such request.

§3714.2 Waiver of rights by mining claimants.

Section 6 of the Act provides as follows:

> The owner or owners of any unpatented mining claim heretofore located may waive and relinquish all rights thereunder which are contrary to or in conflict with the limitations or restrictions specified in section 4 of this Act as to hereafter located unpatented mining claims. The execution and acknowledgement of such a waiver and relinquishment by such owner or owners and the recordation thereof in the office where the notice or certificate of location of such mining claim is of record shall render such mining claim thereafter and prior to issuance of patent subject to the limitations and restrictions in section 4 of this Act in all respects as if said mining claim had been located after enactment of this act, but no such waiver or relinquishment shall be deemed in any manner to constitute any concession as to the date of priority of rights under said mining claim or as to the validity thereof.

§3714.3 Protection of existing rights; exclusion of reservation in patents.

The Act in section 7 provides as follows:

> Nothing in this Act shall be construed in any manner to limit or restrict or to authorize the limitation or restriction of any existing rights of any claimant under any valid mining claim heretofore located, except as such rights may be limited or restricted as a result of a proceeding pursuant to section 5 of this Act, or as a result of a waiver and relinquishment pursuant to section 6 of this Act; and nothing in this act shall be construed in any manner to authorize inclusion in any patent hereafter issued under the mining laws of the United States for any mining claim heretofore or hereafter located, of any reservation, limitation, or restriction not otherwise authorized by law, or to limit or repeal any existing authority to include any reservation, limitation, or restriction in any such patent, or to limit or restrict any use of the lands covered by any patented or unpatented mining claim by the United States, its lessees, permittees, and licensees which is otherwise authorized by law.

This section makes it clear that all of the rights of mining claimants existing on the date of the Act are preserved and will continue unless: (a) Claimant fails, subject, however, to the provisions of §3712.2-7, to file a verified statement in response to a published notice as provided in section 5(b) of the Act and §3712.2-9; (b) it is determined as a result of a hearing pursuant to section 5(c) that such rights asserted in a verified statement are not valid and effective; (c) the claimant waives and relinquishes his rights pursuant to section 6. It also preserves to all mining claimants the right to a patent unrestricted by anything in the Act and provides that no limitation, reservation or restriction may be inserted in any mineral patent unless authorized by law, but it also makes it clear that all laws in force on the date of its enactment which provide for any such reservation, limitation, or restriction in such patents and all authority of law then existing for the use of lands embraced in unpatented mining claims by the United States, its lessees, per-

force and effect.

LR-2 Use and Occupancy

(43 CFR 3715)

Subpart 3715—Use and Occupancy Under the Mining Laws

AUTHORITY: 18 U.S.C. 1001, 3571 *et seq.*; 30 U.S.C. 22, 42, 612; 43 U.S.C. 1061 *et seq.*, 1201, 1457, 1732 (b) and (c), 1733 (a) and (g).

SOURCE: 61 FR 37125, July 16, 1996, unless otherwise noted.

§ 3715.0-1 What are the purpose and the scope of this subpart?

(a) *Purpose.* The purpose of this subpart is to manage the use and occupancy of the public lands for the development of locatable mineral deposits by limiting such use or occupancy to that which is reasonably incident. The Bureau of Land Management (BLM) will prevent abuse of the public lands while recognizing valid rights and uses under the Mining Law of 1872 (30 U.S.C. 22 *et seq.*) and related laws governing the public lands, regardless of when those rights were created. BLM will take appropriate action to eliminate invalid uses, including unauthorized residential occupancy of the public lands.

(b) *Scope.* This subpart applies to public lands BLM administers. They do not apply to state or private lands in which the mineral estate has been reserved to the United States. They do not apply to Federal lands administered by other Federal agencies, even though those lands may be subject to the operation of the mining laws.

(c) This subpart does not impair the right of any person to engage in recreational activities or any other authorized activity on public lands BLM administers.

§ 3715.0-3 What are the legal authorities for this subpart?

The authorities for this subpart are 18 U.S.C. 1001, 3571 *et seq.*; 30 U.S.C. 22, 42, 612; 43 U.S.C. 1061 *et seq.*, 1201, 1457, 1732 (b) and (c), 1733 (a) and (g).

§ 3715.0-5 How are certain terms in this subpart defined?

As used in this subpart the term:

Mining laws means all laws that apply to mining of locatable minerals on public lands and which make public lands available for development of locatable minerals. This includes, but is not limited to, the general authorities relating to mining of locatable minerals or to the public lands on which this subpart is based and case law which interprets those authorities.

Mining operations means all functions, work, facilities, and activities reasonably incident to mining or processing of mineral deposits. It includes building roads and other means of access to a mining claim or millsite on public lands.

Occupancy means full or part-time residence on the public lands. It also means activities that involve residence; the construction, presence, or maintenance of temporary or permanent structures that may be used for such purposes; or the use of a watchman or caretaker for the purpose of monitoring activities. Residence or structures include, but are not limited to, barriers to access, fences, tents, motor homes, trailers, cabins, houses, buildings, and storage of equipment or supplies.

Permanent structure means a structure fixed to the ground by any of the various types of foundations, slabs, piers, poles, or other means allowed by building codes. The term also includes a structure placed on the ground that lacks foundations, slabs, piers, or poles, and that can only be moved through disassembly into its component parts or by techniques commonly used in house moving. The term does not apply to tents or lean-tos.

Public lands means lands open to the operation of the mining laws which BLM administers, including lands covered by unpatented mining claims or millsites.

Prospecting or exploration means the search for mineral deposits by geological, geophysical, geochemical, or other techniques. It also includes, but is not limited to, sampling, drilling, or developing surface or underground workings to evaluate the type, extent, quantity, or quality of mineral values present.

Reasonably incident means the statutory standard "prospecting, mining, or processing operations and uses reasonably incident thereto" (30 U.S.C. 612). It is a shortened version of the statutory standard. It includes those actions or expenditures of labor and resources by a person of ordinary prudence to prospect, explore, define, develop, mine, or beneficiate a valuable mineral deposit, using methods, structures, and equipment appropriate to the geological terrain, mineral deposit, and stage of development and reasonably related activities.

Substantially regular work means work on, or that substantially and directly benefits, a mineral property, including nearby properties under your control. The work must be associated with the search for and development of mineral deposits or the processing of ores. It includes active and continuing exploration, mining, and beneficiation or processing of ores. It may also include assembly or maintenance of equipment, work on physical improvements, and procurement of supplies, incidental to activities meeting the conditions of §§ 3715.2 and 3715.2-1. It may also include off-site trips associated with these activities. The term also includes a seasonal, but recurring, work program.

Unnecessary or undue degradation, as applied to unauthorized uses, means those activities that are not reasonably incident and are not authorized under any other applicable law or regulation. As applied to authorized uses, the term is used as defined in 43 CFR 3802.0-5 and 3809.0-5.

[61 FR 37125, July 16, 1996, as amended at 62 FR 59822, Nov. 5, 1997]

§ 3715.0-9 Information collection.

(a) BLM has submitted to the Office of Management and Budget the information collection requirements contained in this subpart under 44 U.S.C. 3507 and the Paperwork Reduction Act of 1995 and assigned clearance number 1004-0169. BLM collects the information so that it may manage use and occupancy of public lands under the mining laws by prohibiting unauthorized uses and occupancies. A response to BLM is mandatory and required to obtain the benefit of occupying the public lands for reasonably incident activities.

(b) BLM estimates the public reporting burden for this information to average two hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (DW-110), Bureau of Land Management, Building 50, Denver Federal Center, Denver, Colorado 80225-0047, and the Office of Management and Budget, Paperwork Reduction Project, 1004-0169, Washington, DC 20503.

§ 3715.1 Do the regulations in this subpart apply to my use or occupancy?

To determine if the regulations in this subpart apply to your activities, refer to Table 1 in this section.

TABLE 1

Applicability of this subpart	
If your proposed use of the public lands—	Then—
Includes occupancy and is "reasonably incident" as defined by this subpart.	The provisions of this subpart apply to you. You must seek concurrence from BLM before beginning this use and comply with all provisions of this subpart.
Involves the placement, construction, or maintenance of enclosures, gates, fences, or signs.	The provisions of this subpart apply to you. You must seek concurrence from BLM before beginning this use and comply with all provisions of this subpart.
Is reasonably incident, but does not involve occupancy.	The provisions of this subpart do not apply to you, except for §§ 3715.4, 3715.5 and 3715.7. You are subject to the applicable regulations in 43 CFR part 3800.
Is *not* reasonably incident (involving rights-of-way, for example), but may be allowed under the public land laws.	The occupancy consultation provisions of this subpart do not apply to you. Your use is not allowed under this subpart. You must seek authorization under 43 CFR Group 2900.
Is not allowed under the public land laws, the mining laws, the mineral leasing laws, or other applicable laws.	Your use is prohibited. You must not begin or continue unauthorized uses.

TABLE 1—Continued

Applicability of this subpart	
Involves occupancy of a site, or any subsequent site within a 25-mile radius of the initially occupied site, for 14 days or less in any 90-day period.	The provisions of this subpart do not apply to you. Refer to the applicable regulations in 43 CFR part 8360 and pertinent State Director supplementary rules. 43 CFR part 8360 will not otherwise apply to a reasonably incident use or occupancy that this subpart allows.

§3715.2 What activities do I have to be engaged in to allow me to occupy the public lands?

In order to occupy the public lands under the mining laws for more than 14 calendar days in any 90-day period within a 25-mile radius of the initially occupied site, you must be engaged in certain activities. Those activities that are the reason for your occupancy must:

(a) Be reasonably incident;

(b) Constitute substantially regular work;

(c) Be reasonably calculated to lead to the extraction and beneficiation of minerals;

(d) Involve observable on-the-ground activity that BLM may verify under §3715.7; and

(e) Use appropriate equipment that is presently operable, subject to the need for reasonable assembly, maintenance, repair or fabrication of replacement parts.

§3715.2-1 What additional characteristic(s) must my occupancy have?

In addition to the requirements specified in §3715.2, your occupancy must involve one or more of the following:

(a) Protecting exposed, concentrated or otherwise accessible valuable minerals from theft or loss;

(b) Protecting from theft or loss appropriate, operable equipment which is regularly used, is not readily portable, and cannot be protected by means other than occupancy;

(c) Protecting the public from appropriate, operable equipment which is regularly used, is not readily portable, and if left unattended, creates a hazard to public safety;

(d) Protecting the public from surface uses, workings, or improvements which, if left unattended, create a hazard to public safety; or

(e) Being located in an area so isolated or lacking in physical access as to require the mining claimant, operator, or workers to remain on site in order to work a full shift of a usual and customary length. A full shift is ordinarily 8 hours and does not include travel time to the site from a community or area in which housing may be obtained.

§3715.2-2 How do I justify occupancy by a caretaker or watchman?

If you assert the need for a watchman or caretaker to occupy the public lands to protect valuable or hazardous property, equipment, or workings, you must show that the need for the occupancy is both reasonably incident and continual. You must show that a watchman or caretaker is required to be present either whenever the operation is not active or whenever you or your workers are not present on the site.

§3715.2-3 Under what circumstances will BLM allow me to temporarily occupy a site for more than 14 days?

BLM may allow temporary occupancy at a single site to extend beyond the 14-day period described in §3715.1 if you need to secure the site beyond 14 days through the use of a watchman as allowed by §3715.2-2, and you have begun consultation with BLM under §3715.3. If BLM decides not to concur in the occupancy, the temporary occupancy must stop.

§3715.3 Must I consult with BLM before occupancy?

Before beginning occupancy, you must consult with BLM about the requirements of this subpart. See Table 2 in this section.

TABLE 2

Consultation requirements	
If you are proposing a use that would involve occupancy.	Then.
Under a plan of operations or a modification submitted under 43 CFR part 3800, subpart 3802 or subpart 3809.	You must include in the proposed plan of operations the materials required by §3715.3-2 describing any proposed occupancy for BLM review concurrently with review of the plan of operation. BLM will determine whether you have complied with the requirements of this subpart together with its decision approving or modifying the plan.
Under the notice provisions of 43 CFR part 3800, subpart 3809.	You must submit the materials required by §3715.3-2 together with the materials submitted under 43 CFR 3809.1-3 for BLM review concurrently with its review of the proposed activity. Any activities in the notice that do not involve occupancy and are reasonably incident may proceed in accordance with 43 CFR part 3800, subpart 3809.
And is a "casual use" under 43 CFR 3809.1-2 or does not require a plan of operations under 43 CFR 3802.1-2 and 3809.1-4 or a notice under 43 CFR 3809.1-3.	You are subject to the consultation provisions of this subpart and must submit the materials required by §3715.3-2 to BLM. Any casual use activities that do not involve occupancy and are reasonably incident may proceed in accordance with 43 CFR part 3800, subpart 3809.
Or enclosures, fences, gates, or signs intended to exclude the general public.	You are subject to the consultation provisions of this subpart and must submit the materials required by §3715.3-2 to BLM.

§3715.3-1 At what point may I begin occupancy?

You must not begin occupancy until—

(a) You have complied with either 43 CFR part 3800, subpart 3802 or 3809 and this subpart, and BLM has completed its review and made the required determinations under the applicable subparts, and

(b) You have obtained all federal, state and local mining, reclamation, and waste disposal permits, approvals, or other authorizations for the particular use or occupancy as required under this subpart.

§3715.3-2 What information must I provide to BLM about my proposed occupancy?

You must give BLM a detailed map that identifies the site and the placement of the items specified in paragraphs (c), (d), and (e) of this section, and a written description of the proposed occupancy that describes in detail:

(a) How the proposed occupancy is reasonably incident;

(b) How the proposed occupancy meets the conditions specified in §3715.2 and §3715.2-1;

(c) Where you will place temporary or permanent structures for occupancy;

(d) The location of and reason you need enclosures, fences, gates, and signs intended to exclude the general public;

(e) The location of reasonable public passage or access routes through or around the area to adjacent public lands; and

(f) The estimated period of use of the structures, enclosures, fences, gates, and signs, as well as the schedule for removal and reclamation when operations end.

§3715.3-3 How does BLM process the information I submit about my proposed occupancy?

BLM will review all proposed occupancies and all proposed enclosures, fences, gates, or signs intended to exclude the general public to determine if your proposed occupancy or use will conform to the provisions of §§3715.2, 3715.2-1 and 3715.5. BLM will complete its review of a proposed occupancy not involving a plan of operations within 30 business days of receipt of the materials, unless it concludes that the determination cannot be made until:

(a) 30 business days after it prepares necessary environmental documents, and

(b) 30 business days after it has complied with section 106 of the National Historic Preservation Act, Section 7 of the Endangered Species Act, and/or other applicable statutes, if applicable.

§ 3715.3–4 How will BLM notify me of the outcome of its review process?

At the conclusion of the review, BLM will make a written determination of concurrence or non-concurrence, and will send it to you. For operations conducted under a plan of operations, BLM will include this written determination in the decision that approves, modifies, or rejects the plan.

§ 3715.3–5 What will BLM's notification include?

(a) BLM will include in each determination of concurrence a statement requiring you to continue to comply with §§ 3715.2, 3715.2–1 and 3715.5.

(b) BLM will specify in each determination of non-concurrence how the proposed occupancy fails to meet the conditions of § 3715.2, § 3715.2–1 or § 3715.5, and will provide you an opportunity to modify the proposed occupancy or appeal the determination under § 3715.9.

§ 3715.3–6 May I begin occupancy if I have not received concurrence from BLM?

If you have not received concurrence from BLM, you must not begin occupancy even though you have submitted, or plan to submit, an amended occupancy proposal or an appeal.

§ 3715.4 What if I have an existing use or occupancy?

(a) By August 18, 1997, all existing uses and occupancies must meet the applicable requirements of this subpart. If not, BLM will either issue you a notice of noncompliance or order any existing use or occupancy failing to meet the requirements of this subpart to suspend or cease under § 3715.7–1. BLM will also order you to reclaim the land under 43 CFR part 3800, subpart 3802 or 3809 to BLM's satisfaction within a specified, reasonable time, unless otherwise expressly authorized.

(b) If you are occupying the public lands under the mining laws on August 15, 1996, you may continue your occupancy for one year after that date, without being subject to the procedures this subpart imposes, if:

(1) You notify BLM by October 15, 1996 of the existence of the occupancy using a format specified by BLM; and

(2) BLM has no pending trespass action against you concerning your occupancy.

(c) The one-year grace period provided in paragraph (b) of this section will not apply if at any time BLM determines that your use or occupancy is not reasonably incident and the continued presence of the use or occupancy is a threat to health, safety or the environment. In this situation, BLM will order an immediate temporary suspension of activities under § 3715.7–1(a).

(d) If you have no existing occupancies, but are engaged in uses of the public lands under the mining law, you are subject to the standards in § 3715.5. BLM will determine if your existing uses comply with those standards during normal inspection visits to the area and during BLM review of notices and plans of operations filed under 43 CFR part 3800.

§ 3715.4–1 What happens after I give BLM written notification of my existing occupancy?

(a) BLM will visit your site during the normal course of inspection to obtain the information described in § 3715.3–2. After the visit, BLM will make a determination of concurrence or non-concurrence.

(b) You must provide the information described in § 3715.3–2 to BLM. You may provide it either in writing or verbally during a site visit by BLM field staff.

§ 3715.4–2 What if I do not notify BLM of my existing occupancy?

If you do not provide the written notice required in § 3715.4, you will be subject to the enforcement actions of § 3715.7–1, the civil remedies of § 3715.7–2, and the criminal penalties of § 3715.8.

§ 3715.4–3 What if BLM does not concur in my existing use or occupancy?

If BLM determines that all or any part of your existing use or occupancy is not reasonably incident:

(a) BLM may order a suspension or cessation of all or part of the use or occupancy under § 3715.7–1;

(b) BLM may order the land to be reclaimed to its satisfaction and specify a reasonable time for completion of reclamation under 43 CFR part 3800; and

(c) BLM may order you to apply within 30 days after the date of notice from BLM for appropriate authorization under the regulations in 43 CFR Group 2900.

§ 3715.4–4 What if there is a dispute over the fee simple title to the lands on which my existing occupancy is located?

BLM may defer a determination of concurrence or non-concurrence with your occupancy until the underlying fee simple title to the land has been finally determined by the Department of the Interior. During this time, your existing occupancy may continue, subject to § 3715.5(a).

§ 3715.5 What standards apply to my use or occupancy?

(a) Your use or occupancy must be reasonably incident. In all uses and occupancies, you must prevent or avoid "unnecessary or undue degradation" of the public lands and resources.

(b) Your uses must conform to all applicable federal and state environmental standards and you must have obtained all required permits before beginning, as required under 43 CFR part 3800. This means getting permits and authorizations and meeting standards required by state and federal law, including, but not limited to, the Clean Water Act (33 U.S.C. 1251 *et seq.*), Clean Air Act (42 U.S.C. 7401 *et seq.*), and the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), as required under 43 CFR part 3800.

(c) Your occupancies must conform to all applicable federal and state environmental standards and you must have obtained all required permits before beginning, as required under this subpart and 43 CFR part 3800. This means getting permits and authorizations and meeting standards required by state and federal law, including, but not limited to, the Clean Water Act (33 U.S.C. 1251 *et seq.*), Clean Air Act (42 U.S.C. 7401 *et seq.*), and the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), as required under this subpart and 43 CFR part 3800.

(d) If your prospecting or exploration activities involve only surface activities, you must not place permanent structures on the public lands. Any temporary structures you place on the public lands during prospecting or exploration will be allowed only for the duration of the activities, unless BLM expressly and in writing allows them to remain longer. If your prospecting or exploration activities involve subsurface activities, you may place permanent structures on the public lands, if BLM concurs.

(e) All permanent and temporary structures you place on the public lands must conform with the applicable state or local building, fire, and electrical codes, and occupational safety and health and mine safety standards. If state or local codes require, you must obtain a certificate of occupancy or its equivalent before you begin use or occupancy involving permanent structures. If state or local law requires, you must also acquire appropriate sewerage and sanitation permits before the occupancy or use of a permanent structure placed on the public lands.

§ 3715.5–1 What standards apply to ending my use or occupancy?

Unless BLM expressly allows them in writing to remain on the public lands, you must remove all permanent structures, temporary structures, material, equipment, or other personal property placed on the public lands during authorized use or occupancy under this subpart. You have 90 days after your operations end to remove these items. If BLM concurs in writing, this provision will not apply to seasonal operations that are temporarily suspended for less than one year and expected to continue during the next operating season or to operations that are suspended for no longer than one year due to market or labor conditions.

§ 3715.5–2 What happens to property I leave behind?

Any property you leave on the public lands beyond the 90-day period described in § 3715.5–1 becomes property of the United States and is subject to removal and disposition at BLM's discretion consistent with applicable laws and regulations. You are liable for the costs BLM incurs in removing and disposing of the property.

§3715.6 What things does BLM prohibit under this subpart?

Except where other applicable laws or regulations allow, BLM prohibits the following:

(a) Placing, constructing, maintaining or using residences or structures for occupancy not meeting:

(1) The conditions of occupancy under §§3715.2 or 3715.2-1; or

(2) Any of the standards of occupancy under §3715.5;

(b) Beginning occupancy before the filing, review, and approval or modification of a plan of operation as required under 43 CFR part 3800, subparts 3802 or 3809;

(c) Beginning occupancy before consultation with BLM as required by §3715.3 for activities that do not require a plan of operations under 43 CFR part 3800, subpart 3802 or that are defined as casual use or notice activities under 43 CFR part 3800, subpart 3809;

(d) Beginning occupancy without receiving a determination of concurrence because the proposed occupancy or fencing will not conform to the provisions of §3715.2, §3715.2-1 or §3715.5;

(e) Not complying with any order issued under this subpart within the time frames the order provides;

(f) Preventing or obstructing free passage or transit over or through the public lands by force, threats, or intimidation; provided, however, that reasonable security and safety measures in accordance with this subpart are allowed;

(g) Placing, constructing, or maintaining enclosures, gates, or fences, or signs intended to exclude the general public, without BLM's concurrence;

(h) Causing a fire or safety hazard or creating a public nuisance;

(i) Not complying with the notification and other requirements under §3715.4 relating to an existing occupancy; and

(j) Conducting activities on the public lands that are not reasonably incident, including, but not limited to: non-mining related habitation, cultivation, animal maintenance or pasturage, and development of small trade or manufacturing concerns; storage, treatment, processing, or disposal of non-mineral, hazardous or toxic materials or waste that are generated elsewhere and brought onto the public lands; recycling or reprocessing of manufactured material such as scrap electronic parts, appliances, photographic film, and chemicals; searching for buried treasure, treasure trove or archaeological specimens; operating hobby and curio shops; cafes; tourist stands; and hunting and fishing camps.

§3715.7 How will BLM inspect my use or occupancy and enforce this subpart?

(a) BLM field staff is authorized to physically inspect all structures, equipment, workings, and uses located on the public lands. The inspection may include verification of the nature of your use and occupancy to ensure that your use or occupancy is, or continues to be, reasonably incident and in compliance with §§3715.2, 3715.2-1, 3715.4-1 and 3715.5.

(b) BLM will not inspect the inside of structures used solely for residential purposes, unless an occupant or a court of competent jurisdiction gives permission.

§3715.7-1 What types of enforcement action can BLM take if I do not meet the requirements of this subpart?

BLM has four types of orders that it can issue depending on the circumstances:

(a) *Immediate suspension.*

(1) BLM may order an immediate, temporary suspension of all or any part of your use or occupancy if:

(i) All or part of your use or occupancy is not reasonably incident or is not in compliance with §§3715.2, 3715.2-1, 3715.3-1(b), 3715.5 or 3715.5-1, and

(ii) an immediate, temporary suspension is necessary to protect health, safety or the environment.

(2) BLM will presume that health, safety or the environment are at risk and will order your use or occupancy to be immediately and temporarily suspended if:

(i) You are conducting an occupancy under a determination of concurrence under this section; and

(ii) You fail at any time to meet any of the standards in §3715.3-1(b) or §3715.5(b), (c), or (e).

(3) The suspension order will describe—

(i) How you are failing or have failed to comply with the requirements of this subpart; and

(ii) The actions, in addition to suspension of the use or occupancy, that you must take to correct the noncompliance and the time by which you must suspend the use or occupancy. It will also describe the time, not to exceed 30 days, within which you must complete corrective action.

(4) The suspension order will not be stayed by an appeal.

(b) *Cessation order.*

(1) BLM may order a temporary or permanent cessation of all or any part of your use or occupancy if:

(i) All or any part of your use or occupancy is not reasonably incident but does not endanger health, safety or the environment, to the extent it is not reasonably incident;

(ii) You fail to timely comply with a notice of noncompliance issued under paragraph (c) of this section;

(iii) You fail to timely comply with an order issued under paragraph (d) of this section; or

(iv) You fail to take corrective action during a temporary suspension ordered under paragraph (a) of this section.

(2) The cessation order will describe—

(i) The ways in which your use or occupancy is not reasonably incident; is in violation of a notice of noncompliance issued under paragraph (c) of this section; or is in violation of an order issued under paragraphs (a) or (d) of this section, as appropriate;

(ii) The actions, in addition to cessation of the use or occupancy, that you must take to correct the noncompliance;

(iii) The time by which you must cease the use or occupancy, not to exceed 30 days from the date the Interior Board of Land Appeals affirms BLM's order; and

(iv) The length of the cessation.

(c) *Notice of noncompliance.*

(1) If your use or occupancy is not in compliance with any requirements of this subpart, and BLM has not invoked paragraph (a) of this section, BLM will issue an order that describes—

(i) How you are failing or have failed to comply with the requirements of this subpart;

(ii) The actions that you must take to correct the noncompliance and the time, not to exceed 30 days, within which you must start corrective action; and

(iii) The time within which you must complete corrective action.

(2) If you do not start and complete corrective action within the time allowed, BLM may order an immediate suspension under paragraph (a) of this section, if necessary, or cessation of the use or occupancy under paragraph (b) of this section.

(d) *Other.* If you are conducting an activity that is not reasonably incident but may be authorized under 43 CFR Group 2900 or 8300, or, as to sites in Alaska, 43 CFR part 2560, BLM may order you to apply within 30 days from the date you receive the order for authorization under the listed regulations.

[61 FR 37125, July 16, 1996, as amended at 62 FR 59822, Nov. 5, 1997]

§3715.7-2 What happens if I do not comply with a BLM order?

If you do not comply with a BLM order issued under §3715.7-1, the Department of the Interior may request the United States Attorney to institute a civil action in United States District Court for an injunction or order to prevent you from using or occupying the public lands in violation of the regulations of this subpart. This relief may be in addition to the enforcement actions described in §3715.7-1 and the penalties described in §3715.8.

§3715.8 What penalties are available to BLM for violations of this subpart?

The penalties for individuals and organizations are as follows:

(a) *Individuals.* If you knowingly and willfully violate the requirements of this subpart, you may be subject to arrest and trial under section 303(a) of

FLPMA (43 U.S.C. 1733(a)) and/or section 4 of the Unlawful Occupancy and Inclosures of Public Lands Act (43 U.S.C. 1064). If you are convicted, you will be subject to a fine of not more than $100,000 or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571, or imprisonment not to exceed 12 months, or both, for each offense.

(b) *Organizations.* If an organization or corporation knowingly or willfully violates the requirements of this subpart, it is subject to trial and, if convicted, will be subject to a fine of not more than $200,000, or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571.

§3715.8-1 What happens if I make false statements to BLM?

You are subject to arrest and trial before a United States District Court if, in any matter under this subpart, you knowingly and willfully falsify, conceal or cover up by any trick, scheme or device a material fact, or make any false, fictitious or fraudulent statements or representations, or make or use any false writings or document knowing the same to contain any false, fictitious or fraudulent statement or entry. If you are convicted, you will be fined not more than $250,000 or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571, or imprisoned not more than 5 years, or both.

§3715.9 What appeal rights do I have?

If you are adversely affected by a BLM decision, order or determination made under this subpart, you may appeal the decision, order or determination to the Interior Board of Land Appeals (IBLA) under the provisions of 43 CFR part 4.

§3715.9-1 Does an appeal to IBLA suspend a BLM decision?

(a) An appeal to IBLA does not suspend an order requiring an immediate, temporary suspension of occupancy issued under §3715.7-1(a) before the appeal or while it is pending. In this case, the provisions of 43 CFR 4.21(a) do not apply.

(b) The provisions of 43 CFR 4.21(a) apply to all other BLM decisions, orders or determinations under this subpart.

LR-3 Mining in Powersite Withdrawals (Public Law 359)

(43 CFR 3730 - 3738)

PART 3730—PUBLIC LAW 359; MINING IN POWERSITE WITHDRAWALS: GENERAL

Subpart 3730—Public Law 359; Mining in Powersite Withdrawals: General

Sec.
3730.0-1 Purpose; lands open.
3730.0-3 Authority.
3730.0-9 Information collection.

Subpart 3731—Power Rights

3731.1 Power rights retained in the United States.

Subpart 3732—Withdrawals Other Than for Powersite Purposes

3732.1 Act ineffective as to other withdrawals.

Subpart 3733—Risk of Operation

3733.1 Financial risk of operation.
3733.2 Liability of United States.

Subpart 3734—Location and Assessment Work

3734.1 Owner of claim to file notice of location and assessment work.

Subpart 3735—Prior Existing Mining Locations

3735.1 No limitation or restriction of rights under valid claims located prior to withdrawal.
3735.2 No limitation of rights where claimant in diligent prosecution of work when future withdrawals made.

Subpart 3736—Mining Operations

3736.1 Placer locator to conduct no mining operations for 60 days.
3736.2 Hearing; notice of protest.

Subpart 3737—Use

3737.1 Mining claim and millsite use.

Subpart 3738—Surface Protection Requirements

3738.1 Bond or deposit required.
3738.2 Restoration of surface condition.

AUTHORITY: 69 Stat. 681, 30 U.S.C. 621–625; 43 U.S.C. 1701 *et seq.*; 30 U.S.C. 28f–k, 107 Stat. 405.

Subpart 3730—Public Law 359; Mining in Powersite Withdrawals: General

§ 3730.0-1 Purpose; lands open.

(a) The purpose of the Mining Claims Rights Restoration Act of August 11, 1955 (Act), is to permit the mining, development, and utilization of the mineral resources of all public lands withdrawn or reserved for power development and other purposes, except for lands that:

(1) Are included in any project operating or being constructed under a license or permit issued under the Federal Power Act or other Act of Congress, or

(2) Are under examination and survey by a prospective licensee of the Federal Energy Regulatory Commission under an uncancelled preliminary permit that has not been renewed more than once.

(b) Locations made under the Act on lands withdrawn or reserved for power development within the revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands are also subject to the provisions of the Act of April 8, 1948 (62 Stat. 162). See subpart 3821 of this title.

[59 FR 44856, Aug. 30, 1994]

§ 3730.0-3 Authority.

The authorities for the regulations in this part are the Act of August 11, 1955 (30 U.S.C. 621–625); § 314 of the Act of October 21, 1976 (43 U.S.C. 1744); 30 U.S.C. 28f–k, 107 Stat. 405.

[59 FR 44856, Aug. 30, 1994]

§ 3730.0-9 Information collection.

(a) The collections of information contained in subpart 3730 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0110 and subsequently consolidated with 1004–0114. The information will enable the authorized officer to determine whether a mining claimant is qualified to hold a mining claim or site for the exploration, development, and utilization of minerals on all public lands that are withdrawn for power development. A response is required to obtain a benefit in accordance with the Act of August 11, 1955 (30 U.S.C. 621–625), Section 314 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1744), and the Act of August 10, 1993 (Pub. L. 103–66, 107 Stat. 312).

(b) Public reporting burden for this information is estimated to average 8 minutes per response, including time for reviewing instructions, searching existing records, gathering and maintaining the data collected, and completing and reviewing the information collected. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden; to the Information Collection Clearance Officer (783), Bureau of Land Management, 1849 C St., NW, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project, 1004–0114, Washington, DC 20503.

[58 FR 38196, July 15, 1993, as amended at 59 FR 44856, Aug. 30, 1994]

Subpart 3731—Power Rights

§ 3731.1 Power rights retained in the United States.

(a) The Act in the first proviso provides as follows:

> That all power rights to such lands shall be retained by the United States.

(1) Under this proviso every patent issued for such a location must contain a reservation unto the United States, its permittees or licensees of the right to enter upon, occupy and use, any part of the lands for power purposes without any claim or right to compensation accruing to the locator or successor in interest from the occupation or use of any of the lands within the location, for such purposes. Furthermore, the patent will contain a provision that the United States, its permittees and licensees shall not be responsible or held liable or incur any liability for the damage, destruction, or loss of any mining claim, mill site, facility installed or erected, income, or other property or investments resulting from

the actual use of such lands or portions thereof for power development at any time where such power development is made by or under the authority of the United States, except where such damage, destruction, or loss results from the negligence of the United States, its permittees and licensees.

[35 FR 9736, June 13, 1970]

Subpart 3732—Withdrawals Other Than for Powersite Purposes

§ 3732.1 Act ineffective as to other withdrawals.

(a) The Act in section 2(c) provides as follows:

> Nothing in this act shall affect the validity of withdrawals or reservations for purposes other than power development.

(b) If the power site lands are also affected by any other type of withdrawal which prevents mining location in whole or in part, the provisions of the Act apply only to the extent that the lands are otherwise open to location.

[35 FR 9737, June 13, 1970]

Subpart 3733—Risk of Operation

§ 3733.1 Financial risk of operation.

The Act in section 3 provides in part as follows:

> Prospecting and exploration for and the development and utilization of mineral resources authorized in this act shall be entered into or continued at the financial risk of the individual party or parties undertaking such work.

[35 FR 9737, June 13, 1970]

§ 3733.2 Liability of United States.

The Act in section 3 provides in part as follows:

> *Provided*, That the United States, its permittees and licensees shall not be responsible or held liable or incur any liability for the damage, destruction, or loss of any mining claim, mill site, facility installed or erected, income, or other property or investments resulting from the actual use of such lands or portions thereof for power development at any time where such power development is made by or under the authority of the United States, except where such damage, destruction, or loss results from the negligence of the United States, its permittees and licensees.

[35 FR 9737, June 13, 1970]

Subpart 3734—Location and Assessment Work

§ 3734.1 Owner of claim to file notice of location and assessment work.

(a) The owner of any unpatented mining claim, mill site, or tunnel site located on land described in § 3730.0–1 (a) and (b), shall file all notices or certificates of location, amended notices or certificates, and transfers of interest, with the proper State Office of the Bureau of Land Management pursuant to §§ 3833.1, 3833.3, 3833.4, and 3833.5 of this title, and pay the applicable maintenance, location, and service fees required by subpart 3833 of this title. The notice, certificate, transfer, or amendment thereto shall be marked by the owner to indicate that it is being filed pursuant to the Act of August 11, 1955, the Act of April 8, 1948, or both, as required by § 3833.5(c). Failure to so mark the location certificate will delay the procedures to authorize mining under subpart 3736.

(b) Neither section 4 nor any other provision of the Act validates any mining location made prior to the act, which is invalid because made on lands after they were withdrawn or reserved for power purposes and before a favorable determination by the Federal Power Commission under section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1063; 1075), as amended (16 U.S.C. 792; 818) and the opening or restoration of the lands to location. Section 4 applies to unpatented locations for lands referred to in § 3730.0–3(a) only if:

(1) The location was made on or after August 11, 1955, or

(2) The location was made prior to August 11, 1955, and prior to the withdrawal or reservation of the lands for power purposes, or

(3) The location was made prior to August 11, 1955, on lands restored to location from a powersite reserve or withdrawal subject to section 24 of the Federal Power Act.

(c) The owner of any unpatented mining claim, mill site, or tunnel site located on land described in § 3730.0–1 shall perform and record annual assessment work if he or she qualifies as a small miner under § 3833.0–5(u) of this title or pay an annual maintenance fee of $100 per unpatented mining claim, mill site, or tunnel site in lieu of the annual assessment work or notice of intention to hold, pursuant to subpart 3833 of this title.

[35 FR 9737, June 13, 1970, as amended at 58 FR 38196, July 15, 1993; 59 FR 44856, Aug. 30, 1994]

Subpart 3735—Prior Existing Mining Locations

§ 3735.1 No limitation or restriction of rights under valid claims located prior to withdrawal.

(a) The Act in section 5 provides:

> Nothing in this act contained shall be construed to limit or restrict the rights of the owner or owners of any valid mining claim located prior to the date of withdrawal or reservation: *Provided*, That nothing in this act shall be construed to limit or restrict the rights of the owner or owners of any mining claim who are diligently working to make a discovery of valuable minerals at the time any future withdrawal or reservation for power development is made.

(b) Although the Act does not limit or restrict the rights of owners of locations to which section 5 refers, such owners shall comply with section 4 by making the filings required either by paragraph (c) or (d) of § 3734.1 whichever is applicable.

[35 FR 9737, June 13, 1970]

§ 3735.2 No limitation of rights where claimant in diligent prosecution of work when future withdrawals made.

(a) Under section 5 of the Act the rights to a location made prior to any future withdrawal or reservation for power development or one on which the locator was diligently working to make a discovery of valuable minerals are not limited or restricted.

[35 FR 9737, June 13, 1970]

Subpart 3736—Mining Operations

§ 3736.1 Placer locator to conduct no mining operations for 60 days.

(a) The Act in section 2(b) provides in part as follows:

> The locator of a placer claim under this Act, however, shall conduct no mining operations for a period of sixty days after the filing of a notice of location pursuant to section 4 of this Act. If the Secretary of the Interior, within sixty days from the filing of the notice of location, notifies the locator by registered mail of the Secretary's intention to hold a public hearing to determine whether placer mining operations would substantially interfere with other uses of the land included within the placer claim, mining operations on that claim shall be further suspended until the Secretary has held the hearing and has issued an appropriate order. The order issued by the Secretary of the Interior shall provide for one of the following: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining upon the condition that the locator shall, following placer operations, restore the surface of the claim to the condition in which it was immediately prior to those operations; or (3) a general permission to engage in placer mining. No order by the Secretary with respect to such operations shall be valid unless a certified copy is filed in the same State or county office in which the locator's notice of location has been filed, in compliance with the United States mining laws.

(b) Upon receipt of a notice of location of a placer claim filed in accordance with § 3734.1 for land subject to location under the act, a determination will be made by the authorized officer of the Bureau of Land Management as to whether placer mining operations on the land may substantially interfere with other uses thereof. If it is determined that placer operations may substantially interfere with other uses, a notice of intention to hold a hearing will be sent to each of the locators by registered or certified mail within 60 days from date of filing of the location notice.

[35 FR 9737, June 13, 1970]

§ 3736.2 Hearing; notice of protest.

(a) If a hearing is to be held, notice of the hearing will be delivered personally or by registered mail or certified mail to the locator of the placer claim. The notice will indicate the time and place of hearing. The procedures with respect to service of notice of hearing and conduct thereof shall follow the provisions of appeals and contests of the Department of the Interior (part 1850 of this title) in effect at the time the hearing is held. No publication of the notice will be required but a copy thereof shall be posted in the proper office of the Bureau of Land Management for a period of not less than 30 days prior to the date set for the hearing. The manager shall give such publicity to the hearing as may be done without expense to the Government.

(b) Any party, other than a Federal agency, desiring to appear and testify at a hearing in protest to placer mining operations must file a written notice of protest in the proper office wherein the notice of hearing is posted. Such notice, accompanied by a $10 filing fee, must contain the party's name and address and a statement showing the nature of the party's interest in the use of the lands embraced within the mining claim. Each notice of protest must be filed within the period of time specified in the notice of hearing. The authorized officer shall forward a copy of each such notice that is filed to the mining locator prior to the hearing.

(c) Following the hearing, the administrative law judge will render a decision, subject to the right of appeal by any person admitted as a party to the hearing in accordance with the provisions of appeals and contests of the Department of the Interior (part 1850 of this title). Each decision by an administrative lay judge, or upon appeal, shall provide for the issuance of an appropriate order as provided in section 2(b) of the Act; but no such order shall issue until the decision, upon which it is based, becomes final. A certified copy of any order issued shall be filed in the same State or county office in which the location notice has been filed. Any such order permitting mining operations shall be filed at the expense of the mining locator.

[35 FR 9737, June 13, 1970]

Subpart 3737—Use

§ 3737.1 Mining claim and millsite use.

(a) The Act in section 6 provides as follows:

> Notwithstanding any other provisions of this act, all mining claims and mill sites or mineral rights located under the terms of this act or otherwise contained on the public lands as described in section 2 shall be used only for the purposes specified in section 2 and no facility or activity shall be erected or conducted thereon for other purposes.

(b) Under this section, a mining claim or millsite may not be used for purposes other than for legitimate mining and milling. The claimant, therefore, may not erect on the mining claim any facility or activity such as filling stations, curio shops, cafes, tourist or hunting and fishing lodges, or conduct such businesses thereon.

[35 FR 9738, June 13, 1970]

Subpart 3738—Surface Protection Requirements

§ 3738.1 Bond or deposit required.

Should a limited order be issued under section 2(b)(2) of the Act, the locator is required to furnish a bond in a sum determined by the Administrative law judge. The bond must be either a corporate surety bond or a personal bond accompanied by cash or negotiable Federal securities equal at their par value to the amount of the penal sum of the bond, together with power-of-attorney to the Secretary of the Interior or his delegate.

[35 FR 9738, June 13, 1970]

§ 3738.2 Restoration of surface condition.

If the locator fails or refuses to restore the surface, appropriate action will be taken against him and his surety, including the appropriation of any money deposited on personal bonds, to be used for the purpose of restoring the surface of the claim involved. Any moneys on deposit or received from surety in excess of the amount needed for the restoration of the surface of the particular claim shall be refunded.

[35 FR 9738, June 13, 1970]

LR-4 Multiple Mineral Development (Public Law 585)

(43 CFR 3740 - 3746)

PART 3740—PUBLIC LAW 585; MULTIPLE MINERAL DEVELOPMENT

Subpart 3740—Public Law 585, Multiple Mineral Development: General

Sec.
3740.0–1 Purpose.

Subpart 3741—Claims, Locations and Patents

3741.1 Validation of certain mining claims.
3741.2 Preference mining locations.
3741.3 Additional evidence required with application for patent.
3741.4 Reservation to United States of Leasing Act minerals.
3741.5 Mining claims and millsites located on Leasing Act lands after August 13, 1954.
3741.6 Acquisition of Leasing Act minerals in lands covered by mining claims and millsites.

Subpart 3742—Procedures Under the Act

3742.1 Procedure to determine claims to Leasing Act minerals under unpatented mining locations.
3742.2 Recordation of notice of application, offer, permit or lease.
3742.3 Publication of notice.
3742.3–1 Request for publication of notice of Leasing Act filing; supporting instruments.
3742.3–2 Contents of published notice.
3742.3–3 Publication.
3742.3–4 Proof of publication.
3742.3–5 Mailing of copies of published notice.
3742.3–6 Service of copies; failure to comply.
3742.4 Failure of mining claimant to file verified statement.

Subpart 3743—Hearings

3743.1 Hearing procedures.
3743.2 Hearing: Time and place.
3743.3 Stipulation between parties.
3743.4 Effect of decision affirming a mining claimant's rights.

Subpart 3746—Fissionable Source Materials

3746.1 Mining locations for fissionable source materials.

Subpart 3740—Public Law 585, Multiple Mineral Development: General

§ 3740.0–1 Purpose.

The Act of August 13, 1954 (68 Stat. 708, 30 U.S.C. 521 subpart), was enacted "To amend the mineral leasing laws and the mining laws to provide for multiple mineral development of the same tracts of public lands, and for other purposes." The regulations in this part are intended to implement only those sections of said act, hereinafter more fully identified, which require action by the Department of the Interior or its agencies. The expression "Act" when used in this part, means the Act of August 13, 1954 (68 Stat. 708). The expression "Leasing Act", when used in this part, refers to the "mineral leasing laws" as defined in section 11 of the Act of August 13, 1954 (68 Stat 708).

[35 FR 9738, June 13, 1970]

Subpart 3741—Claims, Locations and Patents

SOURCE: 35 FR 9738, June 13, 1970, unless otherwise noted.

§ 3741.1 Validation of certain mining claims.

The Act in section 1(a) provides as follows:

That (a) subject to the conditions and provisions of this Act and to any valid intervening rights acquired under the laws of the United States, any mining claim located under the mining laws of the United States subsequent to July 31, 1939, and prior to February 10, 1954, on lands of the United States, which at the time of location were—

(1) Included in a permit or lease issued under the mineral leasing laws; or

(2) Covered by an application or offer for a permit or lease which had been filed under the mineral leasing laws; or

(3) Known to be valuable for minerals subject to disposition under the mineral leasing laws, shall be effective to the same extent in all respects as if such lands at the time of location, and at all times thereafter, had not been so included or covered or known: *Provided, however*, That, in order to be entitled to the benefits of this act, the owner of any such mining claim located prior to January 1, 1953, must have posted and filed for record, within the time allowed by the provisions of the Act of August 12, 1953 (67 Stat. 539) [not later than December 10, 1953,] an amended notice of location as to such mining claim, stating that such notice was filed pursuant to the provisions of said Act of August 12, 1953, and for the purpose of obtaining the benefits thereof: *And provided further*, That, in order to obtain the benefits of this act, the owner of any such mining claim located subsequent to December 31, 1952, and prior to February 10, 1954, not later than one hundred and twenty days after the date of enactment of this act, must post on such claim in the manner required for posting notice of location of mining claims and file for record in the office where the notice or certificate of location of such claim is of record an amended notice of location for such claim, stating that such notice is filed pursuant to the provisions of this act, and for the purpose of obtaining the benefits thereof and, within said one hundred and twenty day period, if such owner shall have filed a uranium lease application as to the tract covered by such mining claim, must file with the Atomic Energy Commission a withdrawal of such uranium lease application or, if a uranium lease shall have issued pursuant thereto, a release of such lease, and must record a notice of the filing of such withdrawal or release in the county office wherein such notice or certificate of location shall have been filed for record.

§ 3741.2 Preference mining locations.

The Act in section 3(a) and (b) provides as follows:

(a) Subject to the conditions and provisions of this Act and to any valid prior rights acquired under the laws of the United States, the owner of any pending uranium lease application or of any uranium lease shall have, for a period of one hundred and twenty days after the date of enactment of this act, as limited in subsection (b) of this section 3, the right to locate mining claims upon the lands covered by said application or lease.

(b) Any rights under any such mining claim so hereafter located pursuant to the provisions of subsection (a) of this section 3 shall be subject to any rights of the owner of any mining claim which was located prior to February 10, 1954, and which was valid at the date of the enactment of this Act or which may acquire validity under the provisions of this Act. As to any lands covered by a uranium lease and also by a pending uranium lease application, the right of mining location under this section 3, as between the owner of said lease and the owner of said application, shall be deemed as to such conflict area to be vested in the owner of said lease. As to any lands embraced in more than one such pending uranium lease application, such right of mining location, as between the owners of such conflicting applications, shall be deemed to be vested in the owner of the prior application. Priority of such an application shall be determined by the time of posting on a tract then available for such leasing of a notice of lease application in accordance with paragraph (o) of the Atomic Energy Commission's Domestic Uranium Program Circular 7 (10 CFR 60.7(o)) provided there shall have been timely compliance with the other provisions of said paragraph (o) or, if there shall not have been such timely compliance, then by the time of the filing of the uranium lease application with the Atomic Energy Commission. Any rights under any mining claim located under the provisions of this section 3 shall terminate at the expiration of thirty days after the filing for record of the notice or certificate of location of such mining claim unless, within said 30-day period, the owner of the uranium lease application or uranium lease upon which the location of such mining claim was predicated shall have filed with the Atomic Energy Commission a withdrawal of said application or a release of said lease and shall have recorded a notice of the filing of such withdrawal or release in the county office wherein such notice or certificate of location shall be of record.

§ 3741.3 Additional evidence required with application for patent.

All questions between mining claimants asserting conflicting rights of possession under mining claims, must be adjudicated in the courts. Any applicant for mineral patent, who claims benefits under sections 1 or 3 of this Act, or the Act of August 12, 1953, supra, in addition to matters required in Group 3800 of this chapter, must file with his Application for Patent a certified copy of each instrument required to have been recorded as to his mining claim in order to entitle it to such benefits unless an Abstract of Title or Certificate of Title filed with the Application for Patent shall set forth said instruments in full. If a mining claim was located on or after the date of this Act a statement must be filed showing that on the date of location the lands affected were not covered by a uranium lease or an application for a uranium lease. The applicant must also file a copy of the notice required to be posted on the claim and state in his application that such notice was duly posted in accordance with the requirements of the Act.

§ 3741.4 Reservation to United States of Leasing Act minerals.

Section 4 of the Act provides that:

Every mining claim or millsite

(1) Heretofore located under the mining laws of the United States which shall be entitled to benefits under the first three sections of this Act; or

(2) Located under the mining laws of the United States after the effective date of passage of this Act, shall be subject, prior to issuance of a patent therefor, to a reservation to the United States of all Leasing Act minerals and of the right (as limited in section 6 hereof) of the United States, its lessees, permittees, and licensees to enter upon the land covered by such mining claim or millsite and to prospect for, drill for, mine, treat, store, transport, and remove Leasing Act minerals and to use so much of the surface and subsurface of such mining claim or millsite as may be necessary for such purposes, and whenever reasonably necessary, for the purpose of prospecting for, drilling for, mining, treating, storing, transporting, and removing Leasing Act minerals on and from other lands; and any patent issued for any such mining claim or millsite shall contain such reservation as to, but only as to, such lands covered thereby which at the time of the issuance of such patent were—

(a) Included in a permit or lease issued under the mineral leasing laws; or

(b) Covered by an application or offer for a permit or lease filed under the mineral leasing laws; or

(c) Known to be valuable for minerals subject to disposition under the mineral leasing laws.

§ 3741.5 Mining claims and millsites located on Leasing Act lands after August 13, 1954.

Since enactment of the Act on August 13, 1954, and subject to its conditions and provisions, including the reservation of Leasing Act minerals to the United States as provided in section 4, mining claims and millsites may be located under the mining laws of the United States on lands of the United States which at the time of location are—

(a) Included in a permit or lease issued under the mineral leasing laws; or

(b) Covered by an application or offer for a permit or lease filed under the mineral leasing laws; or

(c) Known to be valuable for minerals subject to disposition under the mineral leasing laws: This is inclusive of lands in petroleum reserves, except Naval petroleum reserves;

to the same extent in all respects as if such lands were not so included or covered or known.

§ 3741.6 Acquisition of Leasing Act minerals in lands covered by mining claims and millsites.

The Leasing Act minerals in lands covered by mining claims and millsites located after the date of the Act or validated pursuant to the Act may be acquired under the mineral leasing laws, upon appropriate application therefor being filed prior to the issuance of patent to such mining claims or millsites, or after the issuance of patent, if the patent contains a reservation of Leasing Act minerals to the United States as provided in section 4 of the Act.

Subpart 3742—Procedures Under the Act

SOURCE: 35 FR 9739, June 13, 1970, unless otherwise noted.

§ 3742.1 Procedure to determine claims to Leasing Act minerals under unpatented mining locations.

Section 7 of the Act provides a procedure whereby a Leasing Act applicant, offeror, permittee or lessee may have determined the existence and validity of claims to Leasing Act minerals asserted under unpatented mining locations made prior to August 13, 1954, affecting lands embraced within such application, offer, permit or lease. This procedure is described in the succeeding regulations, and involves the prior recording of notice of such application, offer, permit or lease and the filing of a request for publication of notice of the same.

§ 3742.2 Recordation of notice of application, offer, permit or lease.

Not less than 90 days prior to the filing of such request for publication, there must have been filed for record in the county office of record for each county in which lands covered thereby are situated, a notice of the filing of the application or offer, or of the issuance of the permit or lease, upon which said request for publication is based. Such notice must set forth the date of the filing of such application or offer or of the issuance of such permit or lease, the name and address of the applicant, offeror, permittee or lessee, and the description of the lands covered by such application, offer, permit or lease, showing the section or sections of the public land surveys which embrace such lands, or, if such lands are unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands, or a tie by courses and distances to an approved United States mineral monument.

§ 3742.3 Publication of notice.

§ 3742.3–1 Request for publication of notice of Leasing Act filing; supporting instruments.

(a) Having complied with the requirement of § 3742.2 the applicant, offeror, permittee or lessee may file a Request for Publication of notice of such party's application, offer, permit or lease. Such request for publication shall be filed in the proper office. No Request for Publication, or publication, may include lands in more than one District.

(b) The filing of a Request for Publication must be accompanied by the following:

(1) A certified copy of the Notice of Application, offer, permit or lease setting forth the date of recordation thereof. The date of recordation shall be presumed to have been the date when the notice was filed for record unless the certified copy of the notice shows otherwise or is accompanied by an affidavit of the person filing the request for publication showing that the notice was filed for record on a date prior to the date of recordation.

(2) An affidavit or affidavits of a person or persons over 21 years of age, setting forth that the affiant or affiants have examined the lands involved in a reasonable effort to ascertain whether any person or persons were in actual possession of or engaged in the working of the lands covered by such request or any part thereof. If no person or persons were found to be in actual possession of or engaged in the working of said lands or any part thereof, on the date of such examination, such affidavit or affidavits shall set forth such fact. If any person or persons were so found to be in actual possession or engaged in such working on the date of such examination, such affidavit or affidavits shall set forth the name and address of each such person unless the affiant shall have been unable, through reasonable inquiry, to obtain information as to the name and address of such person; in which event, the affidavit or affidavits shall set forth fully the nature and the results of such inquiry.

(3) The certificate of a title or abstract company, or of a title abstractor, or of an attorney, based upon such company's, abstractor's or attorney's examination of the instruments affecting the lands involved, of record in the public records of the county in which said lands are situated as shown by the indices of the public records in the county office of record for said county, setting forth the name of any person disclosed by said instruments to have an interest in said lands under any unpatented mining claim located prior to enactment of the Act on August 13, 1954, together with the address of such person if disclosed by such instruments of record.

(4) A nonrefundable $10 remittance to cover service charge.

§ 3742.3–2 Contents of published notice.

The notice to be published as required by the preceding section, shall describe the lands covered by the application, offer, permit or lease in the same manner as is required under § 3742.2 Such published notice shall notify whomever it may concern, that if any person claiming or asserting under, or by virtue of, any unpatented mining claim located prior to enactment of the Act of August 13, 1954, any right or interest in Leasing Act minerals as to such lands or any part thereof, shall fail to file in the office where such Request for Publication was filed (which office shall be specified in such notice), and within 150 days from the date of the first publication of such notice (which date shall be specified in such notice), a verified statement which shall set forth, as to such unpatented mining claim:

(a) The date of location;

(b) The book and page of recordation of the notice or certificate of location;

(c) The section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument;

(d) Whether such claimant is a locator or purchaser under such location; and

(e) The name and address of such claimant and names and addresses so far as known to the claimant of any other person or persons claiming any interest or interests in or under such unpatented mining claim; such failure shall be conclusively deemed (1) to constitute a waiver and relinquishment by such mining claimant of any and all right, title, and interest under such mining claim as to, but only as to, Leasing Act minerals, and (2) to constitute a consent by such mining claimant that such mining claim and any patent issued therefor, shall be subject to the reservation of Leasing Act minerals specified in section 4 of the Act, and (3) to preclude thereafter any assertion by such mining claimant of any right or title to or interest in any Leasing Act mineral by reason of such mining claim.

§ 3742.3–3 Publication.

(a) Upon receipt of a Request for Publication and accompanying instruments, if all is found regular, the Authorized officer, or the Director, as may be appropriate, at the expense of the requesting person (who prior to the commencement of publication must furnish the agreement of the publisher to hold such requesting person alone responsible for charges of publication), shall cause notice of the application, offer, permit or lease to be published in a newspaper, to be designated by the Authorized officer, or the Director, as may be appropriate, having general circulation in the county in which the lands involved are situated.

(b) If such notice is published in a daily paper, it shall be published in the Wednesday issue for 9 consecutive weeks, or, if in a weekly paper, in 9 consecutive issues, or, if in a semiweekly or tri-weekly paper, in the issue of the same day of each week for 9 consecutive weeks.

§ 3742.3–4 Proof of publication.

After the period of newspaper publication has expired, the person requesting publication shall obtain from the office of the newspaper of publication, a sworn statement[1] that the notice was published at the time and in accordance with the requirements under these regulations of this part, and shall file such sworn statement in the office where the Request for Publication was filed.

§ 3742.3–5 Mailing of copies of published notice.

Within fifteen days after the date of first publication, the person requesting such publication shall:

(a) Cause a copy of such notice to be personally delivered to or to be mailed by registered mail addressed to each person in possession or engaged in the working of the land whose name and address is shown by the affidavit or affidavits of examination of the land filed, as set forth in § 3742.3–1.

(b) Cause a copy of such notice to be personally delivered to or to be mailed by registered mail addressed to each person who may, on or before the date of first publication, have filed for record, as to any lands described in the published notice, a Request for Notices, as provided in subsection (d) of section 7 of the Act (see § 3744.1);

(c) Cause a copy of such notice to be mailed by registered mail to each person whose name and address is set forth in the certificate required to be filed under § 3742.3–1; and

(d) File in the office where the Request for Publication was filed an affidavit that copies have been delivered or mailed as herein specified. Notwithstanding the requirements in paragraphs (a), (b) and (c) of this section, not more than one copy of such notice need be delivered or mailed to the same person.

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[1] 18 U.S.C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

§ 3742.3–6 Service of copies; failure to comply.

If any applicant, offeror, permittee or lessee requesting publication of notice under these regulations shall fail to comply with the requirements of section 7(a) of the Act as to personal delivery or mailing of a copy of the published notice to any person, the publication of such notice shall be deemed wholly ineffectual as to that person or as to the rights asserted by that person and the failure of that person to file a verified statement, as provided in such notice shall in no manner affect, diminish, prejudice or bar any rights of that person.

§ 3742.4 Failure of mining claimant to file verified statement.

If any claimant under any unpatented mining claim located prior to enactment of the Act on August 13, 1954, which embraces any of the lands described in any notice published in accordance with the regulations in this part shall fail to file a verified statement, as specified in such published notice within one hundred and fifty days from the date of the first publication of such notice, such failure shall be conclusively deemed, except as otherwise provided in § 3742.3–6.

(a) To constitute a waiver and relinquishment by such mining claimant of any and all right, title, and interest under such mining claim as to, but only as to, Leasing Act minerals, and

(b) To constitute a consent by such mining claimant that such mining claim and any patent issued therefor, shall be subject to the reservation of Leasing Act minerals specified in section 4 of the Act, and

(c) To preclude thereafter any assertion by such mining claimant of any right or title to or interest in any Leasing Act minerals by reason of such mining claim.

Subpart 3743—Hearings

Source: 35 FR 9741, June 13, 1970, unless otherwise noted.

§ 3743.1 Hearing procedures.

The procedures with respect to notice of such hearing and the conduct thereof, and in respect to appeals, shall follow the provisions of Appeals and Contests of the Department of the Interior and the Bureau of Land Management (part 1850 of this chapter) relating to contests or protests affecting public lands of the United States.

§ 3743.2 Hearing: Time and place.

If any verified statement shall be filed by a mining claimant then the authorized officer of the proper office, or the Director, as may be appropriate, shall fix a time and place for a hearing to determine the validity and effectiveness of the mining claimant's asserted right or interest in Leasing Act minerals. Such place of hearing shall be in the county where the lands in question, or part thereof, are located, unless the mining claimant agrees otherwise.

§ 3743.3 Stipulation between parties.

If at any time prior to a hearing the person requesting publication of notice and any person filing a verified statement pursuant to such notice shall so stipulate, then to the extent so stipulated, but only to such extent, no hearing shall be held with respect to rights asserted under that verified statement, and to the extent defined by the stipulation the rights asserted under that verified statement shall be deemed to be unaffected by the notice published pursuant to that request.

§ 3743.4 Effect of decision affirming a mining claimant's rights.

If, pursuant to a hearing held as provided in the regulations of this part, the final decision rendered in the matter shall affirm the validity and effectiveness of any mining claimant's right or interest under a mining claim as to Leasing Act minerals, then no subsequent proceedings under section 7 of the Act and the regulations of this part shall have any force or effect upon the so-affirmed right or interest of such mining claimant under such mining claim.

Subpart 3746—Fissionable Source Materials

§ 3746.1 Mining locations for fissionable source materials.

(a) In view of the amendment of section 5(b)(7) of the Atomic Energy Act of 1946 by section 10(c) of the Act of August 13, 1954 (68 Stat. 708), and of the provisions of the Atomic Energy Act of 1954 (68 Stat. 921), it is clear that after enactment of said Act of August 13, 1954, valid mining locations under the mining laws of the United States may be based upon a discovery of a mineral deposit which is a fissionable source material.

(b) As to mining locations made prior to the enactment of said Act of August 13, 1954, section 10(d) of the act provides:

> (d) Notwithstanding the provisions of the Atomic Energy Act, and particularly sec. 5(b)(7) thereof, prior to its amendment hereby, or the provisions of the Act of August 12, 1953 (67 Stat. 539), and particularly sec. 3 thereof, any mining claim, heretofore located under the mining laws of the United States for or based upon a discovery of a mineral deposit which is a fissionable source material and which, except for the possible contrary construction of said Atomic Energy Act, would have been locatable under such mining laws, shall, insofar as adversely affected by such possible contrary construction, be valid and effective, in all respects to the same extent as if said mineral deposit were a locatable mineral deposit other than a fissionable source material.

[35 FR 9741, June 13, 1970, as amended at 41 FR 50690, Nov. 17, 1976]

Group 3800—Mining Claims Under the General Mining Laws

NOTE: The information collection requirements contained in parts 3800, 3810, 3820, 3830, 3860 and 3870 of Group 3800 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004-0025, 1004-0104, 1004-0110 and 1004-0114. The information is being collected to permit the authorized officer to review certain proposed mining activities to ensure that they provide adequate protection of the public lands and their resources. The information will be used to make this determination. A response is required to obtain a benefit.

(See 48 FR 40890, Sept. 12, 1983)

LR-5 Mining Claims under the General Mining Laws

(43 CFR 3800)

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

Subpart 3802—Exploration and Mining, Wilderness Review Program

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AUTHORITY: 5 U.S.C. 552; 16 U.S.C. 1131–1136, 1271–1287, 1901; 25 U.S.C. 463; 30 U.S.C. 21 *et seq.*, 21a, 22 *et seq.*, 36, 621 *et seq.*, 1601; 43 U.S.C. 2, 154, 299, 687b–687b–4, 1068 *et seq.*, 1201, 1701 *et seq.*; 62 Stat. 162.

SOURCE: 45 FR 13974, Mar. 3, 1980, unless otherwise noted.

Subpart 3802—Exploration and Mining, Wilderness Review Program

§ 3802.0-1 Purpose.

The purpose of this subpart is to establish procedures to prevent impairment of the suitability of lands under wilderness review for inclusion in the wilderness system and to prevent unnecessary or undue degradation by activities authorized by the U.S. Mining Laws and provide for environmental protection of the public lands and resources.

§ 3802.0-2 Objectives.

The objectives of this subpart are to:

(a) Allow mining claim location, prospecting, and mining operations in lands under wilderness review pursuant to the U.S Mining Laws, but only in a manner that will not impair the suitability of an area for inclusion in the wilderness system unless otherwise permitted by law; and

(b) Assure management programs that reflect consistency between the U.S. Mining Laws, and other appropriate statutes.

§ 3802.0-3 Authority.

These regulations are issued under the authority of sections 302 and 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1733, and 1782).

§ 3802.0-5 Definitions.

As used in this subpart, the term:

(a) *Reclamation*, which shall be commenced, conducted and completed as soon after disturbance as feasible without undue physical interference with mining operations, means:

(1) Reshaping of the lands disturbed and affected by mining operations to the approximate original contour or to an appropriate contour considering the surrounding topography as determined by the authorized officer;

(2) Restoring such reshaped lands by replacement of topsoil; and

(3) Revegetating the lands by using species previously occurring in the area to provide a vegetative cover at least to the point where natural succession is occuring.

(b) *Environment* means surface and subsurface resources both tangible and intangible, including air, water, mineral, scenic, cultural, paleontological, vegetative, soil, wildlife, fish and wilderness values.

(c) *Wilderness Study Area* means a roadless area of 5,000 acres or more or roadless islands which have been found through the Bureau of Land Management wilderness inventory process to have wilderness characteristics (thus having the potential of being included in the National Wilderness Preservation System), and which will be subjected to intensive analysis through the Bureau's planning system, and through public review to determine wilderness suitability, and is not yet the subject of a Congressional decision regarding its designation as wilderness.

(d) *Impairment of suitability for inclusion in the Wilderness System* means taking actions that cause impacts, that cannot be reclaimed to the point of being substantially unnoticeable in the area as a whole by the time the Secretary is scheduled to make a recommendation to the President on the suitability of a wilderness study area for inclusion in the National Wilderness Preservation System or have degraded wilderness values so far, compared with the area's values for other purposes, as to significantly constrain the Secretary's recommendation with respect to the area's suitability for preservation as wilderness.

(e) *Mining claim* means any unpatented mining claim, millsite, or tunnel site authorized by the U.S. mining laws.

(f) *Mining operations* means all functions, work, facilities, and activities in connection with the prospecting, development, extraction, and processing of mineral deposits and all uses reasonably incident thereto including the construction and maintenance of means of access to and across lands subject to these regulations, whether the operations take place on or off the claim.

(g) *Operator* means a person conducting or proposing to conduct mining operations.

(h) *Authorized officer* means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this subpart.

(i) *Wilderness inventory* means an evaluation conducted under BLM wilderness inventory procedures which results in a written description and map showing those lands that meet the wilderness criteria established under section 603(a) of the Federal Land Policy and Management Act.

(j) *Manner and degree* means that existing operations will be defined geographically by the area of active development and the logical adjacent (not necessarily contiguous) continuation of the existing activity, and not necessarily by the boundary of a particular, claim or lease, and in some cases a change in the kind of activity if the impacts from the continuation and change of activity are not of a significantly different kind than the existing impacts. However, the significant measure for these activities is still the impact they are having on the wilderness potential of an area. It is the actual use of the area, and not the existence of an entitlement for use, which is the controlling factor. In other words, an existing activity, even if impairing, may continue to be expanded in an area or progress to the next stage of development so long as the additional impacts are not significantly different from those caused by the existing activity. In determining the manner and degree of existing operations, a rule of reason will be employed.

(k) *Valid existing right* means a valid discovery had been made on a mining claim on October 21, 1976, and continues to be valid at the time of exercise.

(l) *Undue and unnecessary degradation* means impacts greater than those that would normally be expected from an activity being accomplished in compliance with current standards and regulations and based on sound practices, including use of the best reasonably available technology.

(m) *Substantially unnoticeable* means something that either is so insignificant as to be only a very minor feature of the overall area or is not distinctly recognizable by the average visitor as being manmade or man-caused because of age, weathering or biological change.

§ 3802.0-6 Policy.

Under the 1872 Mining Law (30 U.S.C. 22 *et seq.*), a person has a statutory right consistent with other laws and Departmental regulations, to go upon the open (unappropriated and unreserved) public lands for the purpose of mineral prospecting, exploration, development, and extraction. The Federal Land Policy and management Act requires the Secretary to regulate mining operations in lands under wilderness review to prevent impairment of the suitability of these areas for inclusion in the wilderness system. However, mining operations occurring in the same manner and degree that were being conducted on October 21, 1976, may continue, even if they are determined to be impairing. Mining activities not exceeding manner and degree shall be regulated only to prevent undue and unnecessary degradation of public lands.

§ 3802.0-7 Scope.

(a) These regulations apply to mining operations conducted under the United States mining laws, as they affect the resources and environment or wilderness suitability of lands under wilderness review.

(b) These regulations apply to means of access across public land for the purpose of conducting operations under the U.S. mining laws.

§ 3802.1 Plan of operations.

An approved plan shall include appropriate environmental protection and reclamation measures selected by the authorized officer that shall be carried out by the operator. An operator may prepare and submit with a plan measures for the reclamation of the affected area.

§ 3802.1-1 When required.

An approved plan of operations is required for operations within lands under wilderness review prior to commencing:

(a) Any mining operations which involve construction of means of access, including bridges, landing areas for aircraft, or improving or maintaining such access facilities in a way that alters the alignment, width, gradient size, or character of such facilities;

(b) Any mining operations which destroy trees 2 or more inches in diameter at the base;

(c) Mining operations using tracked vehicles or mechanized earth moving equipment, such as bulldozers or backhoes;

(d) Any operations using motorized vehicles over other than *open use areas and trails* as defined in subpart 6292 of this title, *off-road vehicles*, unless the use of a motorized vehicle can be covered by a temporory use permit issued under subpart 8372 of this title;

(e) The construction or placing of any mobile, portable or fixed structure on public land for more than 30 days;

(f) On mining operations requiring the use of explosives; or

(g) Any operation which may cause changes in a water course.

§ 3802.1-2 When not required.

A plan of operations under this subpart is not required for—

(a) Searching for and occasionally removing mineral samples or specimens;

(b) Operating motorized vehicles over *open use areas and trails* as defined in 43 CFR part 8340 so long as the vehicles conform to the operating regulations and vehicle standards contained in that subpart;

(c) Maintaining or making minor improvements of existing access routes, bridges, landing areas for aircraft, or other facilities for access where such improvements or maintenance shall not alter the alignment, width, gradient, size or character of such facilities; or

(d) Making geological, radiometric, geochemical, geophysical or other tests and measurements using instruments, devices, or drilling equipment which are transported without using mechanized earth moving equipment or tracked vehicles.

§ 3802.1-3 Operations existing on October 21, 1976.

A plan of operations shall not be required for operations that were being conducted on October 21, 1976, unless the operation is undergoing changes that exceed the manner and degree of operations on October 21, 1976. However, if the authorized officer determines that operations in the same manner and degree are causing undue or unnecessary degradation of lands and resources or adverse environmental effects, an approved plan containing protective measures may be required. Any changes planned in an existing operation that would result in operations exceeding the present manner and degree shall be delayed until the plan is processed under provisions of § 3802.1-5 of this title.

§ 3802.1-4 Contents of plan of operations.

(a) A plan of operations shall be filed in the District Office of the Bureau of Land Management in which the claim is located.

(b) No special form is required to file a plan of operations.

(c) The plan of operations shall include—

(1) The name and mailing address of both the person for whom the operation will be conducted, and the person who will be in charge of the operation and should be contacted concerning the reclamation or other aspects of the operation (any change in the mailing address shall be reported promptly to the authorized officer);

(2) A map, preferably a topographic map, or sketch showing present road, bridge or aircraft landing area locations, proposed road, bridge or aircraft landing area locations, and size of areas where surface resources will be disturbed;

(3) Information sufficient to describe either the entire operation proposed or reasonably foreseeable operations and how they would be conducted, including the nature and location of proposed structures and facilities;

(4) The type and condition of existing and proposed means of access or aircraft landing areas, the means of transportation used or to be used, and the estimated period during which the proposed activity will take place;

(5) If and when applicable, the serial number assigned to the mining claim, mill or tunnel site filed pursuant to subpart 3833 of this title.

§ 3802.1-5 Plan approval.

(a) The authorized officer shall promptly aknowledge the receipt of a plan of operations and within 30 days of receipt of the plan act on the plan of operations to determine its acceptability.

(b) The authorized officer shall review the plan of operations to determine if the operations are impairing the suitability of the area for preservation as wilderness. Pending approval of the plan of operations, mining operations may continue in a manner that minimizes environmental impacts as prescribed in § 3802.3 of this title. After completing the review of the plan of operations, the authorized officer shall give the operator written notice that:

(1) The plan is approved subject to measures that will prevent the impairment of the suitability of the area for preservation as wilderness as determined by the authorized officer;

(2) Plans covering operations on a claim with a valid existing right are approved subject to measures that will prevent undue and unnecessary degradation of the area; or

(3) The anticipated impacts of the mining operations are such that all or part of further operations will impair the suitability of the area for preservation as wilderness, the plan is disapproved and continuance of such operations is not allowed.

(c) Upon receipt of a plan of operations for mining activities commencing after the effective date of these regulations, the authorized officer may notify the operator, in writing, that:

(1) In an area of lands under wilderness review where an inventory has not been completed, an operator may agree to operate under a plan of operations that includes terms and conditions that would be applicable in a wilderness study area. Without an agreement to this effect, no action may be taken on the plan until a wilderness inventory is completed;

(2) The area has been inventoried and a final decision has been issued and become effective that the area does not contain wilderness characteristics, and that the mining operations are no longer subject to these regulations; or

(3) The anticipated impacts are such that all or part of the proposed mining operations will impair the suitability of the area for preservation as wilderness, and therefore, the proposed mining operation cannot be allowed.

(d) In addition to paragraphs (a) through (c) of this section, the following general plan approval procedures may also apply. The authorized officer may notify the operator, in writing, that:

(1) The plan of operations is unacceptable and the reasons therefore;

(2) Modification of the plan of operations is necessary to meet the requirements of these regulations;

(3) The plan of operations is being reviewed, but that more time, not to exceed an additional 60 days, is necessary to complete such review, setting forth the reasons why additional time is needed except in those instances where it is determined that an Environmental Impact Statement, compliance with section 106 of the National Historic Preservation Act (NHPA) or section 7 of the Endangered Species Act is needed. Periods during which the area of operations is inaccessible for inspection due to climatic conditions, fire hazards or other physical conditions or legal impediments, shall not be included when counting the 60 calendar day period; or

(4) The proposed operations do not require a plan of operations.

(e) If the authorized officer does not notify the operator of any action on the plan of operations within the 30-day period, or the 60-day extension, or notify the operator of the need for an Environmental Impact Statement or compliance with section 106 of NHPA or section 7 of the Endangered Species Act, operations under the plan may begin. The option to begin operations under this section does not constitute approval of a plan of operations. However, if the authorized officer at a later date finds that operations under the plan are impairing wilderness suitability, the authorized officer shall notify the operator that the operations are not in compliance with these regulations and what changes are needed, and shall require the operator to submit a modified plan of operations, within a time specified in the notice. If the operator is notified of the need for an Environmental Impact Statement, the plan of operations shall not be approved before 30 days after a final statement is prepared and filed with the Environmental Protection Agency. If the is operator notified of the need for compliance with section 106 of the NHPA or section 7 of the Endangered Species Act, the plan of operations shall not be approved until the compliance responsibilities of the Bureau of Land Management are satisfied.

(f) If cultural resource properties listed on or eligible for listing on the National Register of Historic Places are within the area of operations, no operations which would affect those resources shall be approved until compliance with section 106 of the National Historic Preservation Act is accomplished. The operator is not required to do or to pay for an inventory. The responsibility and cost of the cultural resource mitigation, except as provided in § 3802.3-2(f) of this title, included in an approved plan of operation shall be the operator's.

(g) Pending final approval of the plan of operations, the authorized officer may approve any operations that may be necessary for timely compliance with requirements of Federal and State laws. Such operations shall be conducted so as to prevent impairment of wilderness suitability and to minimize environmental impacts as prescribed by the authorized officer in accordance with the standards contained in § 3802.3 of this title.

§ 3802.1-6 Modification of plan.

(a) If the development of a plan for an entire operation is not possible, the operator shall file an initial plan setting forth this proposed operation to the degree reasonably foreseeable at that time. Thereafter, the operator shall file a supplemental plan or plans prior to undertaking any operations not covered by the initial plan.

(b) At any time during operations under an approved plan of operations, the authorized officer or the operator may initiate a modification of the plan detailing any necessary changes that were unforeseen at the time of filing of the plan of operations. If the operator does not furnish a proposed modification within a time considered reasonable by the authorized officer, the authorized officer may recommend to the State Director that the operator be required to submit a proposed modification of the plan. The recommendation of the authorized officer shall be accompanied by a statement setting forth the supporting facts and reasons for his recommendations. In acting upon such recommendation, except in the case of a modification under § 3802.1-5(e) of this title, the State Director shall determine (1) whether all reasonable measures were taken by the authorized officer to predict the environmental impacts of the proposed operations; (2) whether the disturbance is or may become of such significance as to require modification of the plan of operations in order to meet the requirement for environmental protection specified in § 3802.3-2 of this title, and (3) whether the disturbance can be minimized using reasonable means. Lacking such a determination by the State Director, an operator is not required to submit a proposed modification of an approved plan of operations. Operations may continue in accordance with the approved plan of operations until a modified plan is approved, unless the State Director determines that the operations are causing impairment or unnecessary or undue degradation to surface resources. He shall advise the operator of those measures needed to avoid such damage and the operator shall immediately take all necessary steps to implement measures recommended by the State Director.

(c) A supplemental plan of operations or a modification of an approved plan of operations shall be approved by the authorized officer in the same manner as the initial plan of operations.

§ 3802.1-7 Existing operations.

(a) Persons conducting mining operations on the effective date of these regulations, who would be required to submit a plan of operations under § 3802.1-1 of this title, may continue operations but shall, within 60 days after the effective date of these regulations, submit a plan of operations. Upon a showing of good cause, the authorized officer shall grant an extension of time to submit a plan of operations not to exceed an additional 180 days.

(b) Operations may continue according to the submitted plan of operations during its review unless the operator is notified otherwise by the authorized officer.

(c) Upon approval of a plan of operations, mining operations shall be conducted in accordance with the approved plan.

§ 3802.2 Bond requirements.

(a) Any operator who conducts mining operations under an approved plan of operations shall, if required to do so by the authorized officer, furnish a bond in an amount determined by the authorized officer. The authorized officer may determine not to require a bond where mining operations would cause nominal environmental damage, or the operator has an excellent past record for reclamation. In determining the amount of the bond, the authorized officer shall consider the estimated cost of stabilizing and reclaiming all areas disturbed by the operations consistent with § 3802.3-2(h) of this title.

(b) In lieu of a bond, the operator may deposit and maintain in a Federal depository account of the United States Treasury, as directed by the authorized officer, cash in an amount equal to the required dollar amount of the bond or negotiable securities of the United States having a face and market value at the time of deposit of not less than the required dollar amount of the bond.

(c) In place of the individual bond on each separate operation, a blanket bond covering hardrock mining operations may be furnished, at the option of the operator, if the terms and conditions as determined by the authorized officer are sufficient to comply with these regulations.

(d) In the event that an approved plan of operations is modified in accordance with § 3802.1-5 of this title, the authorized officer shall review the initial bond for adequacy and, if necessary, shall require that the amount of bond be adjusted to conform to the plan of operations, as modified.

(e) When a mining claim is patented, except for the California Desert Conservation Area, the authorized officer shall release the operator from that portion of the performance bond and plan of operations which applies to operations within the boundaries of the patented land. The authorized officer shall release the operator from the remainder of the performance bond and plan of operations (covering approved means of access outside the boundaries of the mining claim) when the operator has either completed reclamation in accordance with paragraph (f) of this section or those requirements are waived by the authorized officer.

(f) When all or any portion of the reclamation has been completed in accordance with paragraph (h) of § 3802.3-2 of this title, the operator shall notify the authorized officer who shall promptly make a joint inspection with the operator. The authorized officer shall then notify the operator whether the performance under the plan of operations is accepted. When the authorized officer has accepted as completed any portion of the reclamation, he shall reduce proportionally the amount of bond with respect to the remaining reclamation.

§ 3802.3 Environmental protection.

§ 3802.3-1 Environmental assessment.

(a) When a plan of operations or significant modification is filed, the authorized officer shall make an environmental assessment to identify the impacts of the proposed mining operations upon the environment and to determine whether the proposed activity will impair the suitability of the area for preservation as wilderness or cause unnecessary and undue degradation and whether an environmental impact statement is required.

(b) Following completion of the environmental assessment or the environmental impact statement, the authorized officer shall develop measures deemed necessary for inclusion in the plan of operations that will prevent impairment of wilderness suitability and undue or unnecessary degradation of land and resources.

(c) If as a result of the environment assessment, the authorized officer determines that there is substantial public interest in the proposed mining operations, the operator may be notified that an additional period of time is required to consider public comments. The period shall not exceed the additional 60 days provided for approval of a plan in § 3802.1–4 of this title except as provided for cases requiring an environmental impact statement, a cultural resource inventory or section 7 of the Endangered Species Act.

§ 3802.3–2 Requirements for environmental protection.

(a) *Air quality.* The operator shall comply with applicable Federal and State air quality standards, including the requirements of the Clean Air Act (42 U.S.C. 1857 *et seq.*).

(b) *Water quality.* The operator shall comply with applicable Federal and State water quality standards, including regulations issued pursuant to the Federal Water Pollution Control Act (33 U.S.C. 1151 *et seq.*).

(c) *Solid wastes.* The operator shall comply with applicable Federal and State standards for the disposal and treatment of solid wastes. All garbage, refuse, or waste shall either be removed from the affected lands or disposed or treated to minimize, so far as is practicable, its impact on the environment and the surface resources. All tailings, waste rock, trash, deleterious materials of substances and other waste produced by operations shall be deployed, arranged, disposed or treated to minimize adverse impact upon the environment, surface and subsurface resources.

(d) *Visual resources.* The operator shall, to the extent practicable, harmonize operations with the visual resources, identified by the authorized officer, through such measures as the design, location of operating facilities and improvements to blend with the landscape.

(e) *Fisheries, wildlife and plant habitat.* The operator shall take such action as may be needed to minimize or prevent adverse impact upon plants, fish, and wildlife, including threatened or endangered species, and their habitat which may be affected by the operations.

(f) *Cultural and paleontological resources.* (1) The operator shall not knowingly disturb, alter, injure, destroy or take any scientifically important paleontological remains or any historical, archaeological, or cultural district, site, structure, building or object.

(2) The operator shall immediately bring to the attention of the authorized officer any such cultural and/or paleontological resources that might be altered or destroyed by his operation, and shall leave such discovery intact until told to proceed by the authorized officer. The authorized officer shall evaluate the discoveries brought to his attention, and determine within 10 working days what action shall be taken with respect to such discoveries.

(3) The responsibility and the cost of investigations and salvage of such values discovered during approved operations shall be the Federal Goverment's.

(g) *Access routes.* No new access routes that would cause more than temporary impact and therefore would impair wilderness suitability shall be constructed in a wilderness study area. Temporary access routes that are constructed by the operator shall be constructed and maintained to assure adequate drainage and to control or prevent damage to soil, water, and other resource values. Unless otherwise approved by the authorized officer, roads no longer needed for operations shall be closed to normal vehicular traffic; bridges and culverts shall be removed; cross drains, dips, or water bars shall be constructed, and the road surface shall be shaped to as near a natural contour as practicable, be stabilized and revegetated as required in the plan of operations.

(h) *Reclamation.* (1) The operator shall perform reclamation of those lands disturbed or affected by the mining operation conducted by the operator under an approved plan of operations containing reclamation measures stipulated by the authorized officer as contemporaneously as feasible with operations. The disturbance or effect on mined land shall not include that caused by separate operations in areas abandoned before the effective date of these regulations.

(2) An operator may propose and submit with his plan of operations measures for reclamation of the affected area.

(i) *Protection of survey monuments.* The operator shall, to the extent practicable and consistent with the operation, protect all survey monuments, witness corners, reference monuments, bearing trees and line trees against destruction, obliteration, or damage from the approved operations. If, in the course of operations, any monuments, corners or accessories are destroyed, obliterated or damaged by such operations, the operator shall immediately report the matter to the authorized officer. The authorized officer shall prescribe in writing the requirement for the restoration or reestablishment of monuments, corners, bearing trees, and line trees.

§ 3802.4 General provisions.

§ 3802.4–1 Noncompliance.

(a) An operator who conducts mining operations undertaken either without an approved plan of operations or without taking actions specified in a notice of noncompliance within the time specified therein may be enjoined by an appropriate court order from continuing such operations and be liable for damages for such unlawful acts.

(b) Whenever the authorized officer determines that an operator is failing or has failed to comply with the requirements of an approved plan of operations, or with the provisions of these regulations and that noncompliance is causing impairment of wilderness suitability or unnecessary and undue degradation of the resources of the lands involved, the authorized officer shall serve a notice of noncompliance upon the operator by delivery in person to the operator or the operator's authorized agent, or by certified mail addressed to the operator's last known address.

(c) A notice of noncompliance shall specify in what respects the operator is failing or has failed to comply with the requirements of the plan of operations of the provisions of applicable regulations, and shall specify the actions which are in violation of the plan or regulations and the actions which shall be taken to correct the noncompliance and the time limits, not to exceed 30 days, within which corrective action shall be taken.

§ 3802.4–2 Access.

(a) An operator is entitled to non-exclusive access to his mining operations consistent with provisions of the United States mining laws and Departmental regulations.

(b) In approving access as part of a plan of operations, the authorized officer shall specify the location of the access route, the design, construction, operation and maintenance standards, means of transportation, and other conditions necessary to prevent impairment of wilderness suitability, protect the environment, the public health or safety, Federal property and economic interests, and the interests of other lawful users of adjacent lands or lands traversed by the access route. The authorized officer may also require the operator to utilize existing access routes in order to minimize the number of separate rights-of-way, and, if practicable, to construct access routes within a designated transportation and utility corridor, When commercial hauling is involved and the use of an existing access route is required, the authorized officer may require the operator to make appropriate arrangements for use and maintenance.

§ 3802.4–3 Multiple-use conflicts.

In the event that uses under any lease, license, permit, or other authorization pursuant to the provisions of any other law, shall conflict, interfere with, or endanger operations in approved plans or otherwise authorized by these regulations, the conflicts shall be reconciled, as much as practicable, by the authorized officer.

§ 3802.4–4 Fire prevention and control.

The operator shall comply with all applicable Federal and State fire laws and regulations, and shall take all reasonable measures to prevent and suppress fires on the area of mining operations.

§ 3802.4–5 Maintenance and public safety.

During all operations, the operator shall maintain his structures, equipment, and other facilities in a safe and orderly manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced, or otherwise identified to protect the public in accordance with applicable Federal and State laws and regulations.

§ 3802.4–6 Inspection.

The authorized officer shall periodically inspect operations to determine if the operator is complying with these regulations and the approved plan of operations, and the operator shall permit access to the authorized officer for this purpose.

§ 3802.4–7 Notice of suspension of operations.

(a) Except for seasonal suspension, the operator shall notify the authorized officer of any suspension of operations within 30 days after such suspension. This notice shall include:

(1) Verification of intent to maintain structures, equipment, and other facilities, and

(2) The expected reopening date.

(b) The operator shall maintain the operating site, structure, and other facilities in a safe and environmentally acceptable condition during nonoperating periods.

(c) The name and address of the operator shall be clearly posted and maintained in a prominent place at the entrance to the area of mining operations during periods of nonoperation.

§ 3802.4–8 Cessation of operations.

The operator shall, within 1 year following cessation of operations, remove all structures, equipment, and other facilities and reclaim the site of operations, unless variances are agreed to in writing by the authorized officer. Additional time may be granted by the authorized officer upon a show of good cause by the operator.

§ 3802.5 Appeals.

(a) Any party adversely affected by a decision of the authorized officer or the State Director made pursuant to the provisions of this subpart shall have a right of appeal to the Board of Land Appeals, Office of Hearings and Appeals, pursuant to part 4 of this title.

(b) In any case involving lands under the jurisdiction of any agency other than the Department of the Interior, or an office of the Department of the Interior other than the Bureau of Land Management, the office rendering a decision shall designate the authorized officer of such agency as an adverse party on whom a copy of any notice of appeal and any statement of reasons, written arguments, or brief must be served.

§ 3802.6 Public availability of information.

(a) All data and information concerning Federal and Indian minerals submitted under this subpart 3802 are subject to part 2 of this title; Part 2 of this title includes the regulations of the Department of the Interior covering the public disclosure of data and information contained in Department of the Interior records. Certain mineral information not protected from public disclosure under part 2 may of this title be made available for inspection without a Freedom of Information Act (5 U.S.C. 552) request.

(b) When you submit data and information under this subpart 3802 that you believe to be exempt from disclosure to the public, you must clearly mark each page that you believe includes confidential information. BLM will keep all data and information confidential to the extent allowed by § 2.13(c) of this title.

[63 FR 52954, Oct. 1, 1998]

EFFECTIVE DATE NOTE: At 63 FR 529543, Oct. 1, 1998, § 3802.6 was revised, effective Nov. 2, 1998. For the convenience of the user, the superseded text is set forth as follows:

§ 3802.6 Public availability of information.

(a) Except as provided herein, all information and data, including plans of operation, submitted by the operator shall be available for examination by the public at the office of the authorized officer in accordance with the provisions of the Freedom of Information Act (F.O.I.A.).

(b) Information and data submitted and specifically identified by the operator as containing trade secrets or confidential or privileged commercial or financial information and so determined by the authorized officer will not be available for public examination.

(c) The determination concerning specific information which may be withheld from public examination will be made in accordance with the rules in 43 CFR part 2.

LR-5b Surface Management

(43 CFR 3809)

Subpart 3809—Surface Management

SOURCE: 45 FR 78909, Nov. 26, 1980, unless otherwise noted.

NOTE: The information collection requirements contained in this subpart have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0104. This information is needed to permit the authorized officer to determine if a plan of operation is needed to protect the public lands and their resources and to determine if the plan of operations, if one is required, is adequate. The obligation to respond is required to obtain a benefit.

(See 48 FR 8816, Mar. 2, 1983.)

GENERAL

§ 3809.0-1 Purpose.

The purpose of this subpart is to establish procedures to prevent unnecessary or undue degradation of Federal lands which may result from operations authorized by the mining laws.

§ 3809.0-2 Objectives.

The objectives of this regulation are to:

(a) Provide for mineral entry, exploration, location, operations, and purchase pursuant to the mining laws in a manner that will not unduly hinder such activities but will assure that these activities are conducted in a manner that will prevent unnecessary or undue degradation and provide protection of nonmineral resources of the Federal lands;

(b) Provide for reclamation of disturbed areas; and

(c) Coordinate, to the greatest extent possible, with appropriate State agencies, procedures for prevention of unnecessary or undue degradation with respect to mineral operations.

§ 3809.0-3 Authority.

(a) Section 2319 of the Revised Statutes (30 U.S.C. 22 *et seq.*) provides that exploration, location and purchase of valuable mineral deposits, under the mining laws, on Federal lands shall be "under regulations prescribed by law," and section 2478 of the Revised Statutes, as amended (43 U.S.C. 1201), provides that those regulations shall be issued by the Secretary.

(b) Sections 302, 303, 601, and 603 of the Federal and Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) require the Secretary to take any action, by regulation or otherwise, to prevent unnecessary or undue degradation of the Federal lands, provide for enforcement of those regulations, and direct the Secretary to manage the California Desert Conservation Area under reasonable regulations which will protect the scenic, scientific, and environmental values against undue impairment, and to assure against pollution of streams and waters.

(c) The Act of July 23, 1955 (30 U.S.C. 612), provides that rights under mining claims located after July 23, 1955, shall prior to issuance of patent therefor, be subject to the right of the United States to manage and dispose of the vegetative surface resources and to manage other surface resources. The Act also provides that "Any mining claim hereafter located under the mining laws of the United States shall not be used, prior to issuance to patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto."

(d) Section 9 of the Wild and Scenic Rivers Act (16 U.S.C. 1280) provides that regulations issued shall, among other things, provide safeguards against pollution of the rivers involved and unnecessary impairment of the scenery within the area designated for potential addition to, or an actual component of the national wild and scenic rivers system.

(e) The Act of October 21, 1970 (16 U.S.C. 460y *et seq.*), as amended by Section 602 of the Federal Land Policy and Management Act of 1976 (16 U.S.C. 460y-8), established the King Range Conservation Area in California. The Secretary is required under these Acts to manage activities in this conservation area under the General Mining Law of 1872 in such a manner as to protect the scenic, scientific, and environmental values against undue impairment, and ensure against pollution of streams and waters.

[45 FR 78909, Nov. 26, 1980, as amended at 59 FR 44856, Aug. 30, 1994]

§ 3809.0-5 Definitions.

As used in this subpart, the term:

(a) *Authorized officer* means any employee of the Bureau of Land Management to whom authority has been delegated to perform the duties described in this subpart.

(b) *Casual Use* means activities ordinarily resulting in only negligible disturbance of the Federal lands and resources. For example, activities are generally considered *casual use* if they do not involve the use of mechanized earth moving equipment or explosives or do not involve the use of motorized vehicles in areas designated as closed to off-road vehicles as defined in subpart 8340 of this title.

(c) *Federal lands* means lands subject to the mining laws including, but not limited to, the certain *public lands* defined in section 103 of the Federal Land Policy and Management Act of 1976. Federal lands does not include lands in the National Park System, National Forest System, and the National Wildlife Refuge System, nor does it include acquired lands, Stockraising Homestead lands or lands where only the mineral interest is reserved to the United States or lands under Wilderness Review and administered by the Bureau of Land Management (these lands are subject to the 43 CFR part 3802 regulations).

(d) *Mining claim* means any unpatented mining claim, millsite, or tunnel site located under the mining laws and those patented mining claims and millsites located in the California Desert Conservation Area which have been patented subsequent to the enactment of the Federal Land Policy and Management Act of October 21, 1976.

(e) *Mining laws* means the Lode Law of July 26, 1866, as amended (14 Stat. 251); the Placer Law of July 9, 1870, as amended (16 Stat. 217); and the Mining Law of May 10, 1872, as amended (17 Stat. 91); and all laws supplementing and amending those laws, including among others the Building Stone Act of August 4, 1892, as amended (27 Stat. 348); and the Saline Placer Act of January 31, 1901 (31 Stat. 745).

(f) *Operations* means all functions, work, facilities, and activities in connection with prospecting, discovery and assessment work, development, extraction, and processing of mineral deposits locatable under the mining laws and all other uses reasonably incident thereto, whether on a mining claim or not, including but not limited to the construction of roads, transmission lines, pipelines, and other means of access for support facilities across Federal lands subject to these regulations.

(g) *Operator* means a person conducting or proposing to conduct operations.

(h) *Person* means any citizen of the United States or person who has declared the intention to become such and includes any individual, partnership, corporation, association, or other legal entity.

(i) *Project area* means a single tract of land upon which an operator is, or will be, conducting operations. It may include one mining claim or a group of mining claims under one ownership on which operations are or will be conducted, as well as Federal lands on which an operator is exploring or prospecting prior to locating a mining claim.

(j) *Reclamation* means taking such reasonable measures as will prevent unnecessary or undue degradation of the Federal lands, including reshaping land disturbed by operations to an appropriate contour and, where necessary, revegetating disturbed areas so as to provide a diverse vegetative cover. Reclamation may not be required where the retention of a stable highwall or other mine workings is needed to preserve evidence of mineralization.

(k) *Unnecessary or undue degradation* means surface disturbance greater than what would normally result when an activity is being accomplished by a prudent operator in usual, customary, and proficient operations of similar character and taking into consideration the effects of operations on other resources and land uses, including those resources and uses outside the area of operations. Failure to initiate and complete reasonable mitigation measures, including reclamation of disturbed areas or creation of a nuisance may constitute unnecessary or undue degradation. Failure to comply with applicable environmental protection statutes and regulations thereunder will constitute unnecessary or undue degradation. Where specific statutory authority requires the attainment of a stated level of protection or reclamation, such as in the California Desert Conservation Area, Wild and Scenic Rivers, areas designated as part of the National Wilderness System administered by the Bureau of Land Management and other such areas, that level of protection shall be met.

(l) *King Range Conservation Area* means the area designated pursuant to the Act of October 21, 1970 (16 U.S.C. 460y *et seq.*), as amended by Section 602 of the Federal Land Policy and Management Act of 1976 (16 U.S.C. 460y-8).

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980, as amended at 48 FR 8816, Mar. 2, 1983; 59 FR 44856, Aug. 30, 1994]

§ 3809.0-6 Policy.

Consistent with section 2 of the Mining and Mineral Policy Act of 1970 and section 102(a) (7), (8), and (12) of the Federal Land Policy and Management Act, it is the policy of the Department of the Interior to encourage the development of Federal mineral resources and reclamation of disturbed lands. Under the mining laws a person has a statutory right, consistent with Departmental regulations, to go upon the open (unappropriated and unreserved) Federal lands for the purpose of mineral prospecting, exploration, development, extraction and other uses reasonably incident thereto. This statutory right carries with it the responsibility to assure that operations include adequate and responsible measures to prevent unnecessary or undue degradation of the Federal lands and to provide for reasonable reclamation.

§ 3809.0-9 Information collection.

(a) The collections of information contained in subpart 3809 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004-0176. BLM will use the information in regulating and monitoring mining and exploration operations on public lands. Response to requests for information is mandatory in accordance with 43 U.S.C 1701 *et seq.*, The information collection approval expires December 31, 1999.

(b) Public reporting burden for this information is estimated to average 16 hours per response for notices and 32 hours per response for plans of operations, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (783), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Attention Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, referring to information collection clearance number 1004-0176.

[62 FR 9099, Feb. 28, 1997]

§ 3809.1 Operations.

§ 3809.1-1 Reclamation.

All operations, whether casual, under a notice, or by a plan of operations, shall be reclaimed as required in this title.

§ 3809.1-2 Casual use: Negligible disturbance.

No notification to or approval by the authorized officer is required for casual use operations. However, casual use operations are subject to monitoring by the authorized officer to ensure that unnecessary or undue degradation of Federal lands will not occur.

§ 3809.1-3 Notice: Disturbance of 5 acres or less.

(a) All operators on project areas whose operations, including access across Federal lands to the project area, cause a cumulative surface disturbance of 5 acres or less during any calendar year shall notify the authorized officer in the District office of the Bureau of Land Management having jurisdiction over the land in which the claim(s) or project area is located. Prior to conducting additional operations under a subsequent notice covering substantially the same ground, the operator shall have completed reclamation of operations which were conducted under any previous notice. Notification of such activities, by the operator, shall be made at least 15 calendar days before commencing operations under this subpart by a written notice or letter.

(b) Approval of a notice, by the authorized officer, is not required. Consultation with the authorized officer may be required under paragraph (c)(3) of this section when the construction of access routes are involved. Notices properly filed under this section constitute authorization under part 8340 of this title (Off-Road Vehicles).

(c) The notice or letter shall include:

(1) Name and mailing address of the mining claimant and operator, if other than the claimant. Any change of operator or in the mailing address of the mining claimant or operator shall be reported promptly to the authorized officer;

(2) When applicable, the name of the mining claim(s), and serial number(s) assigned to the mining claim(s) recorded pursuant to subpart 3833 of this title on which disturbance will likely take place as a result of the operations;

(3) A statement describing the activities proposed and their location in sufficient detail to locate the activities on the ground, and giving the approximate date when operations will start. The statement shall include a description and location of access routes to be constructed and the type of equipment to be used in their construction. Access routes shall be planned for only the minimum width needed for operations and shall follow natural contours, where practicable, to minimize cut and fill. When the construction of access routes involves slopes which require cuts on the inside edge in excess of 3 feet, the operator may be required to consult with the authorized officer concerning the most appropriate location of the access route prior to commencing operations;

(4) A statement that reclamation of all areas disturbed will be completed to the standard described in §3809.1-3(d) of this title and that reasonable measures will be taken to prevent unnecessary or undue degradation of the Federal lands during operations.

(d) The following standards govern activities conducted under a notice:

(1) Access routes shall be planned for only the minimum width needed for operations and shall follow natural contours, where practicable to minimize cut and fill.

(2) All tailings, dumps, deleterious materials or substances, and other waste produced by the operations shall be disposed of so as to prevent unnecessary or undue degradation and in accordance with applicable Federal and State Laws.

(3) At the earliest feasible time, the operator shall reclaim the area disturbed, except to the extent necessary to preserve evidence of mineralization, by taking reasonable measures to prevent or control on-site and off-site damage of the Federal lands.

(4) Reclamation shall include, but shall not be limited to:

(i) Saving of topsoil for final application after reshaping of disturbed areas have been completed;

(ii) Measures to control erosion, landslides, and water runoff;

(iii) Measures to isolate, remove, or control toxic materials;

(iv) Reshaping the area disturbed, application of the topsoil, and revegetation of disturbed areas, where reasonably practicable; and

(v) Rehabilitation of fisheries and wildlife habitat.

(5) When reclamation of the disturbed area has been completed, except to the extent necessary to preserve evidence of mineralization, the authorized officer shall be notified so that an inspection of the area can be made.

(e) Operations conducted pursuant to this subpart are subject to monitoring by the authorized officer to ensure that operators are conducting operations in a manner which will not cause unnecessary or undue degradation.

(f) Failure of the operator to prevent undue or unnecessary degradation or to complete reclamation to the standards described in this subpart may cause the operator to be subject to a notice of noncompliance as described in § 3809.3–2 of this title.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980, as amended at 48 FR 8816, Mar. 2, 1983]

§ 3809.1–4 Plan of operations: When required.

An approved plan of operations is required prior to commencing:

(a) Operations which exceed the disturbance level (5 acres) described in § 3809.1–3 of this title.

(b) Any operation, except casual use, in the following designated areas:

(1) Lands in the California Desert Conservation Area designated as *controlled* or *limited* use areas by the California Desert Conservation Area plan;

(2) Areas designated for potential addition to, or an actual component of the national wild and scenic rivers system,

(3) Designated Areas of Critical Environmental Concern;

(4) Areas designated as part of the National Wilderness Preservation System and administered by the Bureau of Land Management;

(5) Areas designated as *closed* to off-road vehicle use as defined in subpart 8340 of this title.

(6) The area designated as the King Range Conservation Area pursuant to 16 U.S.C. 460y *et seq.*, as amended by section 602 of the Federal Land Policy and Management Act of 1976.

(c) Plans properly filed and approved under this section constitute authorization under part 8340 of this title (Off-Road Vehicles).

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980, as amended at 48 FR 8816, Mar. 2, 1983; 59 FR 44856, Aug. 30, 1994]

§ 3809.1–5 Filing and contents of plan of operations.

(a) A plan of operations must be filed in the District Office of the Bureau of Land Management having jurisdiction over the Federal lands in which the claim(s) or project area is located.

(b) No special form is required for filing a plan.

(c) The plan shall include:

(1) The name and mailing address of the operator (and claimant if not the operator). Any change of operator or change in the mailing address shall be promptly reported to the authorized officer;

(2) A map, preferably a topographic map, or sketch showing existing and/or proposed routes of access, aircraft landing areas, or other means of access, and size of each area where surface disturbance will occur;

(3) When applicable, the name of the mining claim(s) and mining claim serial numbers assigned to the mining claim(s) recorded pursuant to subpart 3833 of this title.

(4) Information sufficient to describe or identify the type of operations proposed, how they will be conducted and the period during which the proposed activity will take place;

(5) Measures to be taken to prevent unnecessary or undue degradation and measures to reclaim disturbed areas resulting from the proposed operations, including the standards listed in § 3809.1–3(d) of this title. Where an operator advises the authorized officer that he/she does not have the necessary technical resources to develop such measures the authorized officer will assist the operator in developing such measures. If an operator submits reclamation measures, the authorized officer will ensure that the operator's plan is sufficient to prevent unnecessary or undue degradation. All reclamation measures developed by the operator, or by the authorized officer in conjunction with the operator, shall become a part of the plan of operations.

(6) Measures to be taken during extended periods of nonoperation to maintain the area in a safe and clean manner and to reclaim the land to avoid erosion and other adverse impacts. If not filed at the time of plan submittal, this information shall be filed with the authorized officer whenever the operator anticipates a period of nonoperation.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980]

§ 3809.1–6 Plan approval.

(a) A proposed plan of operations shall be submitted to the authorized officer, who shall promptly acknowledge receipt thereof to the operator. The authorized officer shall, within 30 days of such receipt, analyze the proposal in the context of the requirement to prevent unnecessary or undue degradation and provide for reasonable reclamation, and shall notify the operator:

(1) That the plan is approved; or

(2) Of any changes in or additions to the plan necessary to meet the requirements of these regulations; or

(3) That the plan is being reviewed, but that a specified amount of time, not to exceed an additional 60 days, is necessary to complete the review, setting forth the circumstances which justify additional time for review. However, days during which the area of operations is inaccessible for inspection shall not be counted when computing the 60 day period; or

(4) That the plan cannot be approved until 30 days after a final environmental statement has been prepared and filed with the Environmental Protection Agency; or

(5) That the plan cannot be approved until the authorized officer has complied with section 106 of the National Historic Preservation Act or section 7 of the Endangered Species Act.

(b) The authorized officer shall consult with the appropriate official of the bureau or agency having surface management responsibilities where such responsibility is not exercised by the Bureau of Land Management. Prior to plan approval the authorized officer shall obtain the concurrence of such appropriate official to the terms and conditions that may be needed to prevent unnecessary or undue degradation.

(c) The authorized officer shall undertake an appropriate level of cultural resource inventory of the area to be disturbed. The inventory shall be completed within the time allowed by these regulations for approval of the plan (30 days). The operator is not required to do the inventory but may hire an archaeologist approved by the Bureau of Land Management in order to complete the inventory more expeditiously. The responsibility for and cost of salvage of cultural resources discovered during the inventory shall be the Federal Government's. The responsibility of avoiding adverse impacts on those cultural resources discovered during the inventory shall be the operator's.

(d) Pending final approval of the plan, the authorized officer shall approve any operations that may be necessary for timely compliance with requirements of Federal and State laws, subject to any terms and conditions that may be needed to prevent unnecessary or undue degradation.

(e) In the event of a change of operators involving an approved plan of operations, the new operator shall satisfy the requirements of § 3809.1–9 of this title as it relates to bonding.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980]

§ 3809.1–7 Modification of plan.

(a) At any time during operations under an approved plan, the operator on his/her own initiative may modify the plan or the authorized officer may request the operator to do so.

(b) A significant modification of an approved plan must be reviewed and approved by the authorized officer in the same manner as the initial plan.

(c)(1) If, when requested to do so by the authorized officer, the operator does not furnish a proposed modification within a reasonable time, usually 30 days, the authorized officer may recommend to the State Director that the operator be required to submit a proposed modification of the plan. The recommendation of the authorized officer shall be accompanied by a statement setting forth the facts and the reasons for the recommendations.

(2) In acting upon such recommendations the State Director shall determine, within 30 days, whether:

(i) All reasonable measures were taken by the authorized officer at the time the plan was approved to ensure that the proposed operations would not cause unnecessary or undue degradation of the Federal land;

(ii) The disturbance from the operations of the plan as approved or from unforeseen circumstances is or may become of such significance that modification of the plan is essential in order to prevent unnecessary or undue degradation; and

(iii) The disturbance can be minimized using reasonable means.

(3) Once the matter has been sent to the State Director, an operator is not required to submit a proposed modification of an approved plan until a determination is made by the State Director. Where the State Director determines that a plan shall be modified, the operator shall timely submit a modified plan to the authorized officer for review and approval.

(4) Operations may continue in accordance with the approved plan until a modified plan is approved, unless the State Director determines that the operations are causing unnecessary or undue degradation to the land. The State Director shall advise the operator of those reasonable measures needed to avoid such degradation and the operator shall immediately take all necessary steps to implement those measures within a reasonable period established by the State Director.

§ 3809.1-9 Financial guarantees.

(a) No operator or claimant shall—

(1) Initiate operations under a notice without providing the authorized officer certification of the existence of the appropriate financial guarantee as required by paragraph (c) through (f) of this section; or

(2) Conduct operations under a plan of operations without providing the authorized officer with the appropriate financial guarantee as required by paragraphs (g) through (j) of this section.

(b) No financial guarantee is required for operations that constitute casual use under § 3809.1-2.

(c) No operations conducted under a notice in accordance with § 3809.1-3 shall be initiated until the operator or mining claimant provides to the authorized officer a certification that a financial guarantee exists to ensure performance of reclamation in accordance with the requirements of § 3809.1-3(d). Each certification must be accompanied by a calculation of reclamation costs of the proposed activities covered by the notice, as if third party contractors were performing the reclamation after the site is vacated by the operator. This calculation must be certified at the operator's or mining claimant's expense by a third party professional engineer registered to practice within the State in which the activities are proposed. However, when the requirement for a financial guarantee is met by providing evidence of an instrument held by a State agency as provided in this paragraph, the certificaton of costs by a third party professional engineer is not required. The financial guarantee must be sufficient to cover 100 percent of the estimate of the costs of reclamation, as calculated above, required by State and Federal laws and regulations, and may be in any of the forms described in paragraphs (k) and (l) of this section. In calculating the amount of the financial guarantee, each acre of disturbance or fraction thereof shall require not less than $1,000. The financial guarantee may also be met by providing evidence of an appropriate instrument held or approved by a State agency pursuant to State law or regulations so long as the instrument is equivalent to that required by this section, is redeemable by the Secretary, acting by and through BLM, and covers the same area covered by the notice. The certification must accompany the notice submitted to the proper BLM office having jurisdiction over the land in which the claim or project area is located. Failure to submit a complete certification will render the notice incomplete and it will be returned by the authorized officer. The financial guarantee covered by the certification must be available, until replaced by another adequate financial guarantee with the concurrence of the authorized officer or until released by the authorized officer, for the performance of such reclamation as required by § 3809.1-3. Such reclamation shall also include all reasonable measures identified as the result of the consultation required by the authorized officer under § 3809.1-3(c). If there is a material change in any financial guarantee on which the operator or mining claimant's certification is based, the operator or mining claimant must submit an amended certification to the authorized officer within 45 days after the material change occurs.

(d) The certification submitted by the operator, mining claimant, or its authorized agent, for any operations conducted under a notice, shall include:

(1) The name, home address, office and home telephone numbers, and social security number or employer identification number of the operator, mining claimant, or authorized agent;

(2) A statement that the mining claimant or operator for whom the individual is submitting the certification will be responsible for the required reclamation;

(3) A statement that the authorized officer will be notified at the completion of reclamation operations to arrange for a final inspection;

(4) A statement that the financial guarantee in the amount of the estimated reclamation costs, as calculated under § 3809.1-9(c), or $1,000 per acre or fraction thereof of disturbance as described in the attached notice, whichever is greater, exists, followed by a complete description of the financial guarantee and its location;

(5) A statement that the financial guarantee in the amount of the estimated reclamation costs, as calculated under § 3809.1-9(c), or $1,000 per acre or fraction thereof of disturbance, whichever is greater, will be delivered to the authorized officer within 45 days of a demand for its surrender, following failure to complete reclamation, unless an additional period of time not to exceed 45 days is granted in writing by the authorized officer;

(6) A statement acknowledging that surrender of the financial guarantee will not release the operator, mining claimant, or authorized agent from responsibility to ensure completion of the reclamation should the amount of the guarantee be insufficient to complete all required reclamation;

(7) A statement acknowledging that release of the requirement to maintain the financial guarantee does not release or waive any claim the Bureau of Land Management may have against any person under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*, or any other applicable statutes or any applicable regulations; and

(8) A statement acknowledging that non-existence of the financial guarantee or the failure to provide the guarantee upon demand for its surrender by the authorized officer may result in prosecution under 18 U.S.C. 1001, 43 U.S.C. 1733, or other appropriate authorities.

(e) Each statement required by paragraph (d) of this section to be included with the certification must be initialed and dated by the individual submitting the certification. Failure to initial all statements will result in the certification and the notice being returned as incomplete by the authorized officer.

(f) At any time, the authorized officer may require the notice-level operator or mining claimant to demonstrate the existence of the guarantee set out in the certification described in paragraph (c) of this section.

(g) Each operator or mining claimant who conducts operations under an approved plan of operations shall furnish to the authorized officer a financial guarantee in an amount specified by the authorized officer. In determining the amount of the guarantee, the authorized officer shall consider the estimated cost of reasonable stabilization and reclamation of areas disturbed, including the cost to the BLM of conducting the reclamation, using either contract or government personnel.

(h) For activities conducted under a plan of operations, the financial guarantee must be sufficient to cover 100 percent of the costs of reclamation required by State and Federal statutes and regulations and calculated as if third party contractors were performing the reclamation after the site is vacated by the operator. This calculation must be certified at the operator's or mining claimant's expense by a third party professional engineer registered to practice within the State in which the activities are proposed, but when the requirement for a financial guarantee is met by providing evidence of an instrument held or approved by a State agency, the certification of costs by a third party professional engineer will not be required. This calculation must be agreed to by the authorized officer. In no case shall the financial guarantee be less than $2,000 per acre or fraction thereof.

(i) In lieu of requiring the financial guarantee as provided in paragraph (g) of this section, the authorized officer may accept evidence of an existing financial guarantee under State law or regulations, if it is redeemable by the Secretary, acting by and through the authorized officer, and held or approved by a State agency for the same area covered by the plan of operations, upon determining that the instrument held or approved by the State provides the same guarantee as that required by this section, regardless of the type of financial instruments chosen by the State. The operator or mining claimant proposing a plan of operations may offer for the approval of the authorized officer any of the financial instruments listed in paragraphs (k) and (l) of this section. The authorized officer may reject any of the submitted financial instruments, but will do so by decision in writing, with a complete explanation of the reasons for the rejection, within 30 days of the offering. If the State makes a demand against the financial guarantee, thereby reducing the available balance, the operator or mining claimant must replace the amount of reduced financial guarantee with another financial guarantee instrument acceptable under this subpart.

(j) In the event that an approved plan is modified in accordance with 3809.1–7, the authorized officer will review the initial financial guarantee for adequacy and, if necessary, require the operator or mining claimant to adjust the amount of the financial guarantee to cover the estimated cost of reasonable stabilization and reclamation of areas disturbed under the plan as modified. Operators or mining claimants with an approved financial guarantee may request the authorized officer to accept a replacement financial instrument at any time after the approval of an initial instrument. The authorized officer shall review the offered instrument for adequacy and may reject any offered instrument, but will do so by a decision in writing, with a complete explanation of the reasons for the rejection, within 30 days of the offering.

(k) Provided that the State Director has determined that it is a legal financial instrument within the State where the operations are proposed, the financial guarantee may take the form of any of the following:

(1) Surety bonds, including surety bonds arranged or paid for by third parties.

(2) Cash in an amount equal to the required dollar amount of the financial guarantee, to be deposited and maintained in a Federal depository account of the United States Treasury by the authorized officer.

(3) Irrevocable letters of credit from a bank or financial institution organized or authorized to transact business in the United States.

(4) Certificates of deposit or savings accounts not in excess of the maximum insurable amount as set by the Federal Deposit Insurance Corporation.

(5)(i) Any instrument listed in paragraph (k)(5)(i)(A) or (B) of this section having a market value of not less than the required dollar amount of the financial guarantee and maintained in a Securities Investors Protection Corporation insured trust account by a licensed securities brokerage firm for the benefit of the Secretary of the Interior, acting by and through the authorized officer.

(A) Negotiable United States Government, State and Municipal securities or bonds.

(B) Investment-grade rated securities having a Standard and Poor's rating of AAA or AA or an equivalent rating from a nationally recognized securities rating service.

(ii) Notwithstanding the provision in paragraph (c) of this section that an operator or mining claimant conducting operations under a notice need only provide the authorized officer with a certification of the existence of the required financial guarantee, and notwithstanding the provision in paragraph (g) of this section that an operator or mining claimant conducting operations under an approved plan of operations must furnish the required financial guarantee to the authorized officer, any operator or mining claimant who chooses to use the instruments permitted under this paragraph (k)(5) in satisfaction of such provisions, must provide the authorized officer, prior to the initiation of such operations and by the end of each quarter of the calendar year thereafter, a certified statement describing the nature and market value of the instruments maintained in that account, and including any current statements or reports furnished by the brokerage firm to the operator or mining claimant concerning the asset value of the account.

(iii) The operator or mining claimant must review the market value of the account instruments by no later than December 31 of each year to ensure that their market value continues to be not less than the required dollar amount of the financial guarantee. When the market value of the account instruments has declined by more than 10 percent of the required dollar amount of the financial guarantee, the operator or mining claimant must, within 10 days after its annual review or at any time upon the written request of the authorized officer, provide additional instruments, as defined in paragraphs (k)(5)(i)(A) and (B), to the trust account so that the total market value of all account instruments is not less than the required dollar amount of the financial guarantee. The operator or mining claimant must send a certified statement to the authorized officer within 45 days thereafter describing the actions taken by the operator or mining claimant to raise the market value of its account instruments to the required dollar amount of the financial guarantee. The operator or mining claimant must include copies of any statements or reports furnished by the brokerage firm to the operator or mining claimant documenting such an increase.

(iv) Whenever, on the basis of a review conducted under paragraph (k)(5)(iii) of this section, the operator or mining claimant ascertains that the total market value of its trust account instruments exceeds 110 percent of the required dollar amount of the financial guarantee, the operator or mining claimant may request and the authorized officer will authorize a written release of that portion of the account that exceeds 110 percent of the required financial guarantee, if the operator or mining claimant is in compliance with the terms and conditions of its notice or approved plan of operations.

(l) In place of the individual financial guarantee on each separate operation, a blanket financial guarantee covering statewide or nationwide operations may be furnished at the option of the operator or mining claimant, if the terms and conditions are determined by the authorized officer to be sufficient to comply with the regulations in this subpart.

(m) When all or any portion of the reclamation has been completed in accordance with a notice submitted pursuant to § 3809.1–3 or an approved plan of operations, the operator or mining claimant may notify the authorized officer that such reclamation has occurred and may request a reduction in the financial guarantee or BLM approval of the adequacy of the reclamation, or both. Upon any such notification, the authorized officer will promptly inspect the reclaimed area with the operator. The authorized officer will notify the operator, in writing, whether the financial guarantee can be reduced, the reclamation is acceptable, or both. The authorized officer may reduce the financial guarantee by an appropriate amount, not to exceed 60 percent of the total estimated costs of reclamation as calculated in accordance with paragraph (c) or (h) of this section, if the authorized officer determines that a portion of the reclamation has been completed in accordance with applicable requirements, including, but not limited to, requirements for backfilling, regrading, establishment of drainage control, and stabilization and neutralization of leach pads, heaps, leach-bearing tailings, and similar facilities. The authorized officer will not release that portion of the financial guarantee equal to 40 percent of the total estimated costs of reclamation until the area disturbed by operations has been revegetated to establish a diverse, effective, and permanent vegetative cover, and until any effluent discharged from the area has met, without violations and without the necessity for additional treatment, applicable effluent limitations and water quality standards for not less than 1 full year. Any such release of the financial guarantee does not release or waive any claim BLM may have against any person under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*, or under any other applicable statutes or any applicable regulations.

(n) If an operator or mining claimant refuses or is unable to conduct reclamation as provided in the reclamation measures incorporated into its notice or approved plan of operations or the regulations in this subpart, if the terms of the notice or decision approving a plan of operation are not met, or if the operator or mining claimant defaults on the conditions under which the financial guarantee rests, the authorized officer shall take the following action to require the forfeiture of all or part of a financial guarantee for any area or portion of an area covered by the financial guarantee:

(1) Send written notification by certified mail, return receipt requested, to the operator or mining claimant that provided the financial guarantee, and the surety on the financial guarantee, if any, and the State agency holding the financial guarantee, if any, informing them of the decision to require the forfeiture of all or part of the financial guarantee. The notification must include the reasons for the forfeiture and the amount to be forfeited. The amount shall be based on the estimated total cost of achieving the reclamation plan requirements for the area or portion of the area affected, including the administrative costs of the Bureau of Land Management.

(2) In the written notification, advise the operator or mining claimant and surety, if applicable, of the conditions under which forfeiture may be avoided. Such conditions may include, but are not limited to—

(i) Written agreement by the operator, mining claimant, or another party to perform reclamation operations in accordance with a compliance schedule which meets the conditions of the notice or decision approving a plan of operations and the reclamation plan, and a demonstration that such party has the ability to satisfy the conditions; or

(ii) Written permission from the authorized officer to a surety to complete the reclamation, or the portion of the reclamation applicable to the bonded phase or increment, if the surety can demonstrate an ability to complete the reclamation in accordance with the reclamation measures incorporated in a notice or approved plan of operations.

(o) In the event the operator or mining claimant fails to meet the requirements of the written notification provided under paragraph (n) of this section, the authorized officer will—

(1) Proceed immediately to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts if actions to avoid forfeiture have not been taken, or if an appeal has not been filed under § 3809.4, or if such appeal is filed and the decision appealed is confirmed.

(2) Use funds collected from financial guarantee forfeiture to implement the reclamation plan, or portion thereof, on the area or portion of the area to which bond coverage applies.

(p)(1) In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator or mining claimant is liable for the remaining costs. The authorized officer may complete or authorize completion of reclamation of the bonded area and may recover from the operator or mining claimant all costs of reclamation in excess of the amount forfeited.

(2) In the event the amount of financial guarantee forfeited was more than the amount necessary to complete reclamation, the unused funds shall be returned, within a reasonable amount of time, by the authorized officer to the party from whom they were collected.

(q) When a mining claim is patented, the authorized officer will release the operator or mining claimant from the portion of the financial guarantee that applies to operations within the boundaries of the patented land. The authorized officer shall release the operator or mining claimant from the remainder of the financial guarantee, including the portion covering approved means of access outside the boundaries of the mining claim, when the operator or mining claimant has completed acceptable reclamation. However, existing access to patented mining claims, if across Federal lands, shall continue to be regulated under the approved plan and shall include a financial guarantee. The provisions of this paragraph do not apply to patents issued on mining claims within the boundaries of the California Desert Conservation Area (see § 3809.6).

[62 FR 9100, Feb. 28, 1997]

§ 3809.2 Prevention of unnecessary or undue degradation.

§ 3809.2-1 Environmental assessment.

(a) When an operator files a plan of operations or a significant modification which encompasses land not previously covered by an approved plan, the authorized officer shall make an environmental assessment or a supplement thereto to identify the impacts of the proposed operations on the lands and to determine whether an environmental impact statement is required.

(b) In conjunction with the operator, the authorized officer shall use the environmental assessment to determine the adequacy of mitigating measures and reclamation procedures included in the plan to insure the prevention of unnecessary or undue degradation of the land. If an operator advises the authorized officer that he/she is unable to prepare mitigating measures, the authorized officer, in conjunction with the operator, shall use the environmental assessment as a basis for assisting the operator in developing such measures.

(c) If, as a result of the environmental assessment, the authorized officer determines that there is *substantial public interest* in the plan, the authorized officer shall notify the operator, in writing, that an additional period of time, not to exceed the additional 60 days provided for approval of a plan in § 3809.1-6 of this title, is required to consider public comments on the environmental assessment.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980, as amended at 48 FR 8816, Mar. 2, 1983]

§ 3809.2-2 Other requirements for environmental protection.

All operations, including casual use and operations under either a notice (§ 3809.1-3) or a plan of operations (§ 3809.1-4 of this title), shall be conducted to prevent unnecessary or undue degradation of the Federal lands and shall comply with all pertinent Federal and State laws, including but not limited to the following:

(a) *Air quality.* All operators shall comply with applicable Federal and State air quality standards, including the Clean Air Act (42 U.S.C. 1857 *et seq.*).

(b) *Water quality.* All operators shall comply with applicable Federal and State water quality standards, including the Federal Water Pollution Control Act, as amended (30 U.S.C. 1151 *et seq.*).

(c) *Solid wastes.* All operators shall comply with applicable Federal and State standards for the disposal and treatment of solid wastes, including regulations issued pursuant to the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*). All garbage, refuse or waste shall either be removed from the affected lands or disposed of or treated to minimize, so far as is practicable, its impact on the lands.

(d) *Fisheries, wildlife and plant habitat.* The operator shall take such action as may be needed to prevent adverse impacts to threatened or endangered species, and their habitat which may be affected by operations.

(e) *Cultural and paleontological resources.* (1) Operators shall not knowingly disturb, alter, injure, or destroy any scientifically important paleontological remains or any historical or archaeological site, structure, building or object on Federal lands.

(2) Operators shall immediately bring to the attention of the authorized officer any cultural and/or paleontological resources that might be altered or destroyed on Federal lands by his/her operations, and shall leave such discovery intact until told to proceed by the authorized officer. The authorized officer shall evaluate the discoveries brought to his/her attention, take action to protect or remove the resource, and allow operations to proceed within 10 working days after notification to the authorized officer of such discovery.

(3) The Federal Government shall have the responsibility and bear the cost of investigations and salvage of cultural and paleontology values discovered after a plan of operations has been approved, or where a plan is not involved.

(f) *Protection of survey monuments.* To the extent practicable, all operators shall protect all survey monuments, witness corners, reference monuments, bearing trees and line trees against unnecessary or undue destruction, obliteration or damage. If, in the course of operations, any monuments, corners, or accessories are destroyed, obliterated or damaged by such operations, the operator shall immediately report the matter to the authorized officer. The authorized officer shall prescribe, in writing, the requirements for the restoration or reestablishment of monuments, corners, bearing and line trees.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980, as amended at 48 FR 8816, Mar. 2, 1983]

§ 3809.3 General provisions.

§ 3809.3–1 Applicability of State law.

(a) Nothing in this subpart shall be construed to effect a preemption of State laws and regulations relating to the conduct of operations or reclamation on Federal lands under the mining laws.

(b) Each State Director will publish a notice identifying all legal financial guarantees that may be accepted by any authorized officer under his or her jurisdiction, after consultation with the appropriate State authorities to determine which of the financial instruments in § 3809.1–9(k) are allowable under State law to satisfy the financial assurance requirements relating to the reclamation requirements of that State. This list will be updated annually.

(c) The Director may consult with appropriate representatives of each State to formulate and enter into agreements to provide for a joint Federal-State program for administration and enforcement. The purpose of such agreements is to prevent unnecessary or undue degradation of the Federal lands from operations which are conducted under the mining laws, to prevent unnecessary administrative delay and to avoid duplication of administration and enforcement of laws. Such agreements may, whenever possible, provide for State administration and enforcement of such programs.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980, as amended at 62 FR 9102, Feb. 28, 1997]

§ 3809.3–2 Noncompliance.

(a) Failure of an operator to file a notice under § 3809.1–3 of this title or a plan of operations under § 3809.1–4 of this title will subject the operator, at the discretion of the authorized officer, to being served a notice of non-compliance or enjoined from the continuation of such operations by a court order until such time as a notice or plan is filed with the authorized officer. The operator shall also be responsible to reclaim operations conducted without an approved plan of operations or prior to the filing of a required notice.

(b) Failure to reclaim areas disturbed by operations under § 3809.1–3 of this title is a violation of these regulations.

(1) Where an operator is conducting operations covered by 3809.1–3 (notice) of this title and fails to comply with the provisions of that section or properly conduct reclamation according to standards set forth in 3809.1–3(d) of this title, a notice of noncompliance shall be served by delivery in person to the operator or his/her authorized agent, or by certified mail addressed to his/her address of record.

(2) Operators conducting operations under an approved plan of operations who fails to follow the approved plan of operations may be subject to a notice of noncompliance. A notice of noncompliance shall be served in the same manner as described in § 3809.3–2(b)(1) of this section.

(c) All operators who conduct operations under a notice pursuant to § 3809.1–3 and a plan pursuant to § 3809.1–4 of this title on Federal lands without taking the actions specified in a notice of noncompliance within the time specified therein may be enjoined by an appropriate court order from continuing such operations and be liable for damages for such unlawful acts.

(d) A notice of noncompliance shall specify in what respects the operator is failing or has failed to comply with the requirements of applicable regulations, and shall specify the actions which are in violation of the regulations and the actions which shall be taken to correct the noncompliance and the time, not to exceed 30 days, within which corrective action shall be started.

(e) An operator or mining claimant who compiles a record of noncompliance is one who has been served with a notice of noncompliance, whose response period has passed, and who has not commenced the actions required by the authorized officer within the time frames set forth in the notice of noncompliance. An operator or mining claimant with a record of noncompliance will continue in noncompliance status until the actions required in the notice of noncompliance have been completed. Any operator or mining claimant with a record of noncompliance must submit a plan of operations within 30 days under § 3809.1–9 of this subpart for all existing and subsequent operations that would otherwise be conducted pursuant to a notice under § 3809.1–3 of this subpart. Operators or mining claimants with a record of noncompliance will be required to post financial guarantees with the authorized officer under § 3809.1–9 within 90 days after notification for all existing disturbance for which said operators or mining claimants are responsible. Failure to post such financial guarantees within the prescribed 90 days will result in the withdrawal of approval of all existing plans of operation, except that the authorized officer may approve actions proposed by an operator with a record of noncompliance to resolve the cause of the noncompliance or to protect public safety or health or prevent further unnecessary or undue environmental degradation. Financial guarantees held by a State will not be acceptable for purposes of this section, and the calculation must be certified at the operator's or mining claimant's expense by a third party professional engineer registered to practice within the State in which the activities are proposed, and agreed to by the authorized officer. The requirements of this paragraph continue in force until the operator or mining claimant has come into and remained in compliance with them and the regulations of this subpart for a period of not less than 1 calendar year but not more than 3 calendar years. The duration of the requirement will be determined by the State Director.

(f)(1) Any person constituting an operator, mining claimant, or its authorized agent, who knowingly and willfully violates any provision of this subpart is subject to arrest and trial by a United States magistrate and, if convicted, shall be subject to a fine of not more than $100,000, or the alternate fine provided for in the applicable provisions of 18 U.S.C. 3571, or imprisoned for no more than 12 months, or both.

(2) Any organization constituting an operator, mining claimant, or its authorized agent, that knowingly and willfully violates any provision of this subpart is subject to criminal prosecution and, if convicted, shall be subject to a fine of not more than $200,000, or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980, as amended at 62 FR 9103, Feb. 28, 1997]

§ 3809.3–3 Access.

(a) An operator is entitled to access to his operations consistent with provisions of the mining laws.

(b) Where a notice or a plan of operations is required, it shall specify the location of access routes for operations and other conditions necessary to prevent unnecessary or undue degradation. The authorized officer may require the operator to use existing roads to minimize the number of access routes, and, if practicable, to construct access roads within a designated transportation or utility corridor. When commercial hauling is involved and the use of an existing road is required, the authorized officer may require the operator to make appropriate arrangements for use and maintenance.

§ 3809.3–4 Fire prevention and control.

The operator shall comply with all applicable Federal and State fire laws and regulations, and shall take all reasonable measures to prevent and suppress fires in the area of operations.

§ 3809.3–5 Maintenance and public safety.

During all operations, the operator shall maintain his structures, equipment, and other facilities in a safe and orderly manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced, or otherwise identified to alert the public in accordance with applicable Federal and State laws and regulations.

§ 3809.3-6 Inspection.

The authorized officer may periodically inspect operations to determine if the operator is complying with these regulations. The operator shall permit the authorized officer access for this purpose.

§ 3809.3-7 Periods of non-operation.

All operators shall maintain the site, structures and other facilities of the operations in a safe and clean condition during any non-operating periods. All operators may be required, after an extended period of non-operation for other than seasonal operations, to remove all structures, equipment and other facilities and reclaim the site of operations, unless he/she receives permission, in writing, from the authorized officer to do otherwise.

§ 3809.4 Appeals.

(a) Any operator adversely affected by a decision of the authorized officer made pursuant to the provisions of this subpart shall have a right of appeal to the State Director, and thereafter to the Board of Land Appeals, Office of Hearings and Appeals, pursuant to part 4 of this title, if the State Director's decision is adverse to the appellant.

(b) No appeal shall be considered unless it is filed, in writing, in the office of the authorized officer who made the decision from which an appeal is being taken, within 30 days after the date of receipt of the decision. A decision of the authorized officer from which an appeal is taken to the State Director shall be effective during the pendency of an appeal. A request for a stay may accompany the appeal.

(c) The appeal to the State Director shall contain:

(1) The name and mailing address of the appellant.

(2) When applicable, the name of the mining claim(s) and serial number(s) assigned to the mining claims recorded pursuant to subpart 3833 of this title which are subject to the appeal.

(3) A statement of the reasons for the appeal and any arguments the appellant wishes to present which would justify reversal or modification of the decision.

(d) The State Director shall promptly render a decision on the appeal. The decision shall be in writing and shall set forth the reasons for the decision. The decision shall be sent to the appellant by certified mail, return receipt requested.

(e) The decision of the State Director, when adverse to the appellant, may be appealed to the Board of Land Appeals, Office of Hearings and Appeals, pursuant to part 4 of this title.

(f) Any party, other than the operator, aggrieved by a decision of the authorized officer shall utilize the appeals procedures in part 4 of this title. The filing of such an appeal shall not stop the authorized officer's decision from being effective.

(g) Neither the decision of the authorized officer nor the State Director shall be construed as final agency action for the purpose of judicial review of that decision.

[45 FR 78909, Nov. 26, 1980, as amended at 48 FR 8816, Mar. 2, 1983]

§ 3809.5 Public availability of information.

(a) Information and data submitted and specifically identified by the operator as containing trade secrets or confidential or privileged commercial or financial information ; shall not be available for public examination. Other information and data submitted by the operator shall be available for examination by the public at the office of the authorized officer in accordance with the provisions of the Freedom of Information Act.

(b) The determination concerning specific information which may be withheld from public examination shall be made in accordance with the rules in 43 CFR part 2.

§ 3809.6 Special provisions relating to mining claims patented within the boundaries of the California Desert Conservation Area.

In accordance with section 601(f) of the Federal Land Policy and Management Act of October 21, 1976, all patents issued on mining claims located within the boundaries of the California Desert Conservation Area after the enactment of the Federal Land Policy and Management Act shall be subject to the regulations in this part, including the continuation of a plan of operations and of bonding with respect to the land covered by the patent.

LR-6 Lands and Minerals Subject to Location

(43 CFR 3810 - 3816)

PART 3810—LANDS AND MINERALS SUBJECT TO LOCATION

Subpart 3811—Lands Subject to Location and Purchase

Sec.
3811.1 Lands: General.
3811.2 Lands: Specific.
3811.2-1 States where locations may be made.
3811.2-2 Lands in national parks and national monuments.
3811.2-3 Lands in Indian reservations.
3811.2-4 Lands in national forests.
3811.2-5 O and C and Coos Bay Wagon Road lands.
3811.2-6 Lands in powersite withdrawals.
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Subpart 3812—Minerals Under the Mining Laws

3812.1 Minerals subject to location.

Subpart 3813—Disposal of Reserved Minerals Under the Act of July 17, 1914

3813.0-3 Authority.
3813.1 Minerals reserved by the Act of July 17, 1914, subject to mineral location, entry and patenting.
3813.2 Minerals subject to disposition.
3813.3 Provision of the mineral patent.

Subpart 3814—Disposal of Reserved Minerals Under the Stockraising Homestead Act

3814.1 Mineral reservation in entry and patent; mining and removal of reserved deposits; bonds.
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3815.1 Mineral locations.
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3815.6 Locations subject to mining laws.
3815.7 Mining claims subject to stock driveway withdrawals.
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Subpart 3816—Mineral Locations in Reclamation Withdrawals

3816.1 Mineral locations.
3816.2 Application to open lands to location.
3816.3 Recommendations of Bureau of Reclamation to open lands.
3816.4 Recommendations as to reservations and contract form.

AUTHORITY: 30 U.S.C. 22 *et seq.*; 43 U.S.C. 1201 and 1740.

Subpart 3811—Lands Subject to Location and Purchase

SOURCE: 35 FR 9742, June 13, 1970, unless otherwise noted.

§ 3811.1 Lands: General.

Vacant public surveyed or unsurveyed lands are open to prospecting, and upon discovery of mineral, to location and purchase. The Act of June 4, 1897 (30 Stat. 36), provides that "any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry," notwithstanding the reservation. This makes mineral lands in the forest reserves in the public land states, subject to location and entry under the general mining laws in the usual manner. Lands entered or patented under the stockraising homestead law (title to minerals and the use of the surface necessary for mining purposes can be acquired), lands entered under other agricultural laws but not perfected, where prospecting can be done peaceably are open to location.

§ 3811.2 Lands: Specific.

§ 3811.2-1 States where locations may be made.

(a) Mining locations may be made in the States of Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Louisiana, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

(b) The laws of the United States relating to mining claims were extended to Alaska by section 8 of the Act of May 17, 1884 (23 Stat. 26), and sections 15, 16, and 26 of the Act of June 6, 1900 (31 Stat. 327, 329; 48 U.S.C. 119, 120, 381-383) again, in terms, extended the mining laws of the United States and all right incident thereto, to the State, with certain further provisions with respect to the acquisition of claims thereunder.

(c) The law in respect to placer claims in Alaska was modified and amended by the Act of August 1, 1912 (37 Stat. 242) and section 4 of that Act was amended by the Act of March 3, 1925 (43 Stat. 1118).

(d) By the Act of May 4, 1934 (43 Stat. 663; 48 U.S.C. 381a) the Acts of August 1, 1912, and March 3, 1925, were repealed and the general mining laws of the United States applicable to placer mining claims were declared to be in full force and effect in the State.

§ 3811.2-2 Lands in national parks and monuments.

The Mining in the Parks Act (16 U.S.C. 1901 *et seq.*), effectively withdrew all National Parks and Monuments from location and entry under the General Mining Law of 1872, as amended. Since September 28, 1976, all National Parks and Monuments and other units of the National Park System have been closed to the location of mining claims and sites under the General Mining Law of 1872, as amended. Valid existing rights are recognized, but access and permission to operate mining claims and sites within units of the National Park System are now governed by 36 CFR part 9.

[59 FR 44856, Aug. 30, 1994]

§ 3811.2-3 Lands in Indian reservations.

All lands contained within the boundaries of an established Indian Reservation are withdrawn from all location, entry, and appropriation under the General Mining Law of 1872, as amended. All minerals on Indian Reservations may only be acquired by lease pursuant to the Act of May 11, 1938 (25 U.S.C. 396a), the Act of March 3, 1909 (25 U.S.C. 396), or the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*). The regulations governing the mineral leasing of Indian lands are found in 25 CFR Chapter I Subchapter I.

[59 FR 44857, Aug. 30, 1994]

§ 3811.2-4 Lands in national forests.

For mining claims in national forests, see § 3811.1.

§ 3811.2-5 O and C and Coos Bay Wagon Road lands.

Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands, located in Oregon, are subject to mining locations in accordance with provisions of subpart 3821 of this chapter.

§ 3811.2-6 Lands in powersite withdrawals.

Mining claims may be located on power site withdrawals subject to the provisions of part 3730 of this chapter.

§ 3811.2-9 Lands under Color of Title Act.

Lands patented under the Color of Title Act (43 U.S.C. 1068), by exchange under the Taylor Grazing Act (43 U.S.C. 415g) and by Forest Exchanges (16 U.S.C. 485) with mineral reservation to the United States, are subject to appropriation under the mining or mineral leasing laws for the reserved materials. See Group 2200 and subpart 2540 of this chapter. Minerals in acquired lands of the United States are not subject to mining location but the minerals therein may be acquired in accordance with the regulations contained in part 3500.

Subpart 3812—Minerals Under the Mining Laws

§3812.1 Minerals subject to location.

Whatever is recognized as a mineral by the standard authorities, whether metallic or other substance, when found in public lands in quantity and quality sufficient to render the lands valuable on account thereof, is treated as coming within the purview of the mining laws. Deposits of oil, gas, coal, potassium, sodium, phosphate, oil shale, native asphalt, solid and semisolid bitumen, and bituminous rock including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried, the deposits of sulphur in Louisiana and New Mexico belonging to the United States can be acquired under the mineral leasing laws (see §3100.0–3(a)(1)), and are not subject to location and purchase under the United States mining laws. The so-called "common variety" mineral materials and petrified wood on the public lands may be acquired under the Materials Act, as amended (see part 3600).

[35 FR 9743, June 13, 1970]

Subpart 3813—Disposal of Reserved Minerals Under the Act of July 17, 1914

SOURCE: 35 FR 9743, June 13, 1970, unless otherwise noted.

§3813.0–3 Authority.

The Act of July 20, 1956 (70 Stat. 592), which amended the Act of July 17, 1914 (38 Stat. 509; 30 U.S.C. sec. 122), was enacted to permit the disposal of certain reserved mineral deposits under the mining laws of the United States.

§3813.1 Minerals reserved by the Act of July 17, 1914, subject to mineral location, entry and patenting.

The Act of July 17, 1914 (38 Stat. 509; 30 U.S.C. sec. 122), as amended by the act of July 20, 1956 (70 Stat. 592), provides in part as follows:

* * * such deposits to be subject to disposal by the United States only as shall be hereafter expressly directed by law: *Provided, however*, That all mineral deposits heretofore or hereafter reserved to the United States under this Act which are subject, at the time of application for patent to valid and subsisting rights acquired by discovery and location under the mining laws of the United States made prior to the date of the Mineral Leasing Act of February 25, 1920 (41 Stat. 437), shall hereafter be subject to disposal to the holders of those valid and subsisting rights by patent under the mining laws of the United States in force at the time of such disposal. Any person qualified to acquire the reserved deposits may enter upon said lands with a view of prospecting for the same upon the approval of the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages of the crops and improvements on such lands by reason of such prospecting, the measure of any such damage to be fixed by agreement of parties or by a court of competent jurisdiction. Any person who has acquired from the United States the title to or the right to mine and remove the reserved deposits, should the United States dispose of the mineral deposits in lands, may re-enter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removel of the minerals therefrom; and mine and remove such minerals, upon payment of damages caused thereby to the owner of the land, or upon giving a good and sufficient bond or undertaking therefor in an action instituted in any competent court to ascertain and fix said damages:

§3813.2 Minerals subject to disposition.

The Act of July 20, 1956, applies only to any mineral deposit discovered and located under the U.S. mining laws prior to February 25, 1920, and reserved to the United States under the Act of July 17, 1914 (38 Stat. 509; 30 U.S.C. 122), and which, at the time of application for mineral patent, is subject to valid and subsisting rights under the said mining laws. Only that mineral deposit together with the right to use the surface to prospect for, mine, and remove the said deposit shall, on or after July 20, 1956, be subject to disposal to the holders of such valid and subsisting rights by patent under the mining laws in force at the time of such disposal. "Oil" reserved under the Act of 1914 has been held to include oil shale. See 52 L.D. 329.

§3813.3 Provisions of the mineral patent.

(a) Each patent issued under the Act of July 20, 1956, shall specifically name the discovered mineral deposit which had been reserved to the United States under the Act of July 17, 1914, and shall recite that, in accordance with the reservation in the land patent, the mineral patentee and its successors (or his heirs and assigns, if a person) shall have the right to prospect for, mine and remove the mineral deposit for which the patent is issued.

(b) If, when it is determined that mineral deposit is subject to patenting under the mining laws pursuant to the Act of July 20, 1956, there is a subsisting mineral lease or permit covering such deposit, the mineral patent shall be issued subject to the mineral lease or permit for so long as rights under the lease or permit shall exist, the patentee being substituted for the United States as lessor or permittor and the patentee being entitled to all revenues derived subsequent to the issuance of patent from any such lease or permit.

Subpart 3814—Disposal of Reserved Minerals Under the Stockraising Homestead Act

§3814.1 Mineral reservation in entry and patent; mining and removal of reserved deposits; bonds.

(a) Section 9 of the Act of December 29, 1916 (39 Stat. 864; 43 U.S.C. 299), provides that all entries made and patents issued under its provisions shall contain a reservation to the United States of all coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same; also that the coal and other mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal.

(b) Said section 9 also provides that any person qualified to locate and enter the coal or other mineral deposits, or having the right to mine and remove the same under the laws of the United States, shall have the right at all times to enter upon the lands entered or patented under the Act, for the purpose of prospecting for the coal or other mineral therein, provided he shall not injure, damage, or destroy the permanent improvements of the entryman or patentee and shall be liable to and shall compensate the entryman or patentee for all damages to the crops on the land by reason of such prospecting. Under the Act of June 21, 1949 (30 U.S.C. 54), a mineral entryman on a stock raising or other homestead entry or patent is also held liable for any damage that may be caused to the value of the land for grazing by such prospecting for, mining, or removal of minerals except that vested rights existing prior to June 21, 1949, are not impaired.

(c) It is further provided in said section 9 that any person who has acquired from the United States the coal or other mineral deposits in any such land or the right to mine and remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining or removal of the coal, or other minerals, first, upon securing the written consent or waiver of the homestead entryman or patentee; or, second, upon payment of the damages to crops or other tangible improvements to the owner thereof under agreement; or, third, in lieu of either of the foregoing provisions, upon the execution of a good and sufficient bond or undertaking to the United States for the use and benefit of the entryman or owner of the land, to secure payment of such damages to the crops or tangible improvements of the entryman or owner as may be determined and fixed in an action brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties thereon. This bond on Form 3814 must be executed by the person who has acquired from the United States the coal or other mineral deposits reserved, as directed in said section 9, as principal, with two competent individual sureties, or a bonding company which has complied with the requirements of the Act of August 13, 1894 (28 Stat. 279; 6 U.S.C. 6–13), as amended by the Act of March 23, 1910 (36 Stat. 241; 6 U.S.C. 8, 9), and must be in the sum of not less than $1,000. Qualified corporate sureties are preferred and may be accepted as sole surety. Except in the case of a bond given by a qualified corporate surety there must be filed therewith affidavits of justification by the sureties and a certificate by a judge or clerk of a court of record, a United States district attorney, a United States commissioner, or a United States postmaster as to the identity, signatures, and financial competency of the sureties. Said bond, with accompanying papers, must be filed with the authorized officer of the proper office, and there must also be filed with such bond evidence of service of a copy of the bond upon the homestead entryman or owner of the land.

(d) If at the expiration of 30 days after the receipt of the aforesaid copy of the bond by the entryman or owner of the land, no objections are made by such entryman or owner of the land and filed with the authorized officer against the approval of the bond by them, he may, if all else be regular, approve said bond. If, however, after receipt by the homestead entryman or owner of the lands of copy of the bond, such homestead entryman or owner of the land timely objects to the approval of the bond by said authorized officer, the said officer will immediately give consideration to said bond, accompanying papers, and objections filed as aforesaid to the approval of the bond, and if, in consequence of such consideration he shall find and conclude that the proffered bond ought not to be approved, he will render decision accordingly and give due notice thereof to the person proffering the bond, at the same time advising such person of his right of appeal to the Director of the Bureau of Land Management from the action in disapproving the bond so filed and proffered. If, however, the authorized officer, after full and complete examination and consideration of all the papers filed, is of the opinion that the proffered bond is a good and sufficient one and that the objections interposed as provided herein against the approval thereof do not set forth sufficient reasons to justify him in refusing to approve said proffered bond, he will, in writing, duly notify the homestead entryman or owner of the land of his decision in this regard and allow such homestead entryman or owner of the land 30 days in which to appeal to the Director of the Bureau of Land Management. If appeal from the adverse decision of the authorized officer be not timely filed by the person proffering the bond, the authorized officer will indorse upon the bond "disapproved" and other appropriate notations, and close the case. If, on the other hand, the homestead entryman or owner of the lands fails to timely appeal from the decision of the authorized officer adverse to the contentions of said homestead entryman or owners of the lands, said authorized officer may, if all else be regular, approve the bond.

(e) The coal and other mineral deposits in the lands entered or patented under the Act of December 29, 1916, will become subject to existing laws, as to purchase or lease, at any time after allowance of the homestead entry unless the lands or the coal or other mineral deposits are, at the time of said allowance, withdrawn or reserved from disposition.

[35 FR 9743, June 13, 1970, as amended at 41 FR 29122, July 15, 1976]

§ 3814.2 Mineral reservation in patent; conditions to be noted on mineral applications.

(a) There will be incorporated in patents issued on homestead entries under this Act the following:

> Excepting and reserving, however, to the United States all the coal and other minerals in the lands so entered and patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove all the coal and other minerals from the same upon compliance with the conditions, and subject to the provisions and limitations, of the Act of December 29, 1916 (39 Stat. 862).

(b) Mineral applications for the reserved deposits disposable under the Act must bear on the face of the same, before being signed by the declarant or applicant and presented to the authorized officer the following notation:

> Patents shall contain appropriate notations declaring same subject to the provisions of the Act of December 29, 1916 (39 Stat. 862), with reference to disposition, occupancy, and use of the land as permitted to an entryman under said Act.

[35 FR 9743, June 13, 1970]

Subpart 3815—Mineral Locations in Stock Driveway Withdrawals

SOURCE: 35 FR 9744, June 13, 1970, unless otherwise noted.

§ 3815.1 Mineral locations.

Under authority of the provisions of the Act of January 29, 1929 (45 Stat. 1144; 43 U.S.C. 300), the rules, regulations, and restrictions in this section are prescribed for prospecting for minerals of the kinds subject to the United States mining laws, and the locating of mining claims upon discovery of such minerals in lands within stock driveway withdrawals made before or after May 4, 1929.

§ 3815.2 Prospecting and mining.

All prospecting and mining operations shall be conducted in such manner as to cause no interference with the use of the surface of the land for stock driveway purposes, except such as may actually be necessary.

§ 3815.3 Surface limitation.

While a mining location will be made in accordance with the usual procedure for locating mining claims, and will describe a tract of land, having due regard to the limitations of area fixed by the mining laws, the locator will be limited under his location to the right to the minerals discovered in the land and to mine and remove the same, and to occupy so much of the surface of the claim as may be required for all purposes reasonably incident to the mining and removal of the minerals.

§ 3815.4 Protection of stock.

All excavations and other mining work and improvements made in prospecting and mining operations shall be fenced or otherwise protected to prevent the same from being a menace to stock on the land.

§ 3815.5 Access to stock watering places.

No watering places shall be inclosed, nor proper and lawful access of stock thereto prevented, nor the watering of stock thereat interfered with.

§ 3815.6 Locations subject to mining laws.

Prospecting for minerals and the location of mining claims on lands in such withdrawals shall be subject to the provisions and conditions of the mining laws and the regulations thereunder.

§ 3815.7 Mining claims subject to stock driveway withdrawals.

Mining claims on lands within stock driveway withdrawals, located prior to May 4, 1929, and subsequent to the date of the withdrawal, may be held and perfected subject to the provisions and regulations in this section.

§ 3815.8 Notation required in application for patent; conditions required in patent.

(a) Every application for patent for any minerals located subject to this Act must bear on its face, before being executed by the applicant and presented for filing, the following notation:

> Subject to the provisions of section 10 of the Act of December 29, 1916 (39 Stat. 862), as amended by the Act of January 29, 1929 (45 Stat. 1144).

Like notation will be made by the manager on the final certificates issued on such a mineral application.

(b) Patents issued on such applications will contain the added condition:

> That this patent is issued subject to the provisions of the Act of December 29, 1916 (39 Stat. 862), as amended by the Act of January 29, 1929 (45 Stat. 1144), with reference to the disposition, occupancy and use of the land as permitted to an entryman under said Act.

Subpart 3816—Mineral Locations in Reclamation Withdrawals

SOURCE: 35 FR 9744, June 13, 1970, unless otherwise noted.

§ 3816.1 Mineral locations.

The Act of April 23, 1932 (47 Stat. 136; 43 U.S.C. 154), authorizes the Secretary of the Interior in his discretion to open to location, entry and patent under the general mining laws with reservation of rights, ways and easements, public lands of the United States which are known or believed to contain valuable deposits of minerals and which are withdrawn from development and acquisition because they are included within the limits of withdrawals made pursuant to section 3 of the reclamation Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416).

§ 3816.2 Application to open lands to location.

Application to open lands to location under the Act may be filed by a person, association or corporation qualified to locate and purchase claims under the general mining laws. The application must be executed in duplicate and filed in the proper office, must describe the land the applicant desires to locate, by legal subdivision if surveyed, or by metes and bounds if unsurveyed, and must set out the facts upon which is based the knowledge or belief that the lands contain valuable mineral deposits, giving such detail as the applicant may be able to furnish as to the nature of the formation, kind and character of the mineral deposits. Each application shall be accompanied by a $10 nonrefundable service charge.

§ 3816.3 Recommendations of Bureau of Reclamation to open lands.

When the application is received in the Bureau of Land Management, if found satisfactory, the duplicate will be transmitted to the Bureau of Reclamation with request for report and recommendation. In case the Bureau of Reclamation makes an adverse report on the application, it will be rejected subject to right of appeal.

§ 3816.4 Recommendations as to reservations and contract form.

If in the opinion of the Bureau of Reclamation the lands may be opened under the Act without prejudice to the rights of the United States, the report will recommend the reservation of such ways, rights and easements considered necessary or appropriate, and/or the form of contract to be executed by the intending locator or entryman as a condition precedent to the vesting of any rights in him, which may be necessary for the protection of the irrigation interests.

LR-7 Areas Subject to Special Mining Laws

(43 CFR 3820 - 3825)

PART 3820—AREAS SUBJECT TO SPECIAL MINING LAWS

Subpart 3821—O and C Lands

Sec.

3821.0-3 Authority.
3821.1 General provisions.
3821.2 Requirements for filing notices of locations of claims; descriptions.
3821.3 Requirement for filing statements of assessment work.
3821.4 Restriction on use of timber; application for such use.
3821.5 Application for final certificates and patents.

Subpart 3822—Lands Patented Under the Alaska Public Sale Act

3822.1 Subject to mining location.
3822.2 Compensation to surface rights holder.

Subpart 3823—Prospecting, Mineral Locations, and Mineral Patents Within National Forest Wilderness

3823.0-1 Purpose.
3823.0-5 Definition.
3823.1 Prospecting within National Forest Wilderness for the purpose of gathering information about mineral resources.
3823.2 Mineral locations within National Forest Wilderness.
3823.3 Mineral patents within National Forest Wilderness.
3823.4 Withdrawal from operation of the mining laws.

Subpart 3825—Tohono O'Odham (Formerly Papago) Indian Reservation, Arizona

3825.0-3 Authority.
3825.1 Mining locations in Tohono O'Odham Indian Reservation in Arizona.

Subparts 3826–3827 [Reserved]

AUTHORITY: 30 U.S.C. 22 *et seq.*; 43 U.S.C. 1201 and 1740.

Subpart 3821—O and C Lands

SOURCE: 35 FR 9745, June 13, 1970, unless otherwise noted.

§ 3821.0-3 Authority.

The authorities for the regulations in this subpart are the Act of April 8, 1948 (62 Stat. 162); Section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744); and the Act of August 10, 1993 (30 U.S.C. 28f-k, 107 Stat. 405).

[59 FR 44857, Aug. 30, 1994]

§ 3821.1 General provisions.

(a) The Act of April 8, 1948 (62 Stat. 162) reopens the revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands (hereinafter referred to in this section as the O. and C. lands) in Oregon, except power sites, to exploration, location, entry, and disposition under the United States Mining Laws. The Act also validates mineral claims, if otherwise valid, located on the O. and C. lands during the period from August 28, 1937 to April 8, 1948.

(b) The procedure in the locating of mining claims, performance of annual labor, and the prosecution of mineral patent proceedings in connection with O. and C. lands is the same as provided by the United States Mining Laws and the general regulations in this part, and is also subject to the additional conditions and requirements hereinafter set forth.

§ 3821.2 Requirements for filing notices of locations of claims; descriptions.

The owner of any unpatented mining claim, mill site, or tunnel site located on land described in § 3821.1 shall file all notices or certificates of location, amended notices or certificates, and transfers of interest in the proper State Office of the Bureau of Land Management pursuant to §§ 3833.1, 3833.3, 3833.4, and 3833.5 of this title and shall pay the applicable maintenance, location, and service fees required by subpart 3833 of this title. The notice or certificate of location, or amendment thereto, shall be marked by the owner as being filed under the Act of April 8, 1948, and, if located on powersite lands, also the Act of August 11, 1955, as prescribed by §§ 3734.1 and 3833.5 of this title.

[59 FR 44857, Aug. 30, 1994

§ 3821.3 Requirement for filing statements of assessment work.

The owner of an unpatented mining claim, mill site, or tunnel site located on O and C lands shall perform and record proof of annual assessment work, or pay an annual maintenance fee of $100 per unpatented mining claim, mill site, or tunnel site, pursuant to subpart 3833 of this title.

[59 FR 44857, Aug. 30, 1994]

§ 3821.4 Restriction on use of timber; application for such use.

The owner of any unpatented mining claim located upon O. and C. lands on or after August 28, 1937, shall not acquire title, possessory or otherwise, to the timber, now or hereafter growing upon such claim. Such timber may be managed and disposed of under existing law or as may be provided by subsequent law. The owner of such unpatented mining claim, until such time as the timber is otherwise disposed of by the United States, if he wishes to cut and use so much of the timber upon his claim as may be necessary in the development and operation of his mine, shall file a written application with the district forester for permission to do so. The application shall set forth the estimated quantity and kind of timber desired and the use to which it will be put. The applicant shall not cut any of the timber prior to the approval of the application therefor.

§ 3821.5 Applications for final certificates and patents.

Applications for patents and final certificates in connection with mining claims located upon O. and C. lands on or after August 28, 1937 must be noted "Mining claims on O. and C. lands, under the Act of April 8, 1948." All patents issued on such claims located on or after August 28, 1937, shall contain an appropriate reference to the Act of April 8, 1948, and shall indicate that the patent is issued subject to the conditions and limitations of the Act.

Subpart 3822—Lands Patented Under the Alaska Public Sale Act

§ 3822.1 Subject to mining location.

Lands segregated for classification or sold under the Alaska Public Sale Act of August 30, 1949 (63 Stat. 679, 48 U.S.C.

364a–364e) are subject to mining location, under the provision of section 3 of that Act for the development of the reserved minerals under applicable law, including the United States mining laws, and subject to the rules and regulations of the Secretary of the Interior necessary to provide protection and compensation for damages from mining activities to the surface and improvements thereon. Such mining locations are subject to the applicable general regulations in Group 3800 and to the additional conditions and requirements in §2771.6–2 of this chapter.

[35 FR 9746, June 13, 1970]

§3822.2 Compensation to surface rights holder.

Any party who obtains the right, whether by license, permit, lease, or location, to prospect for, mine, or remove the minerals after the land shall have been segregated or disposed of under the Act, will be required to compensate the holder of the surface rights for any damages that may be caused to the value of the land and to the tangible improvements thereon by such mining operations or prospecting, and may be required by an authorized officer, as to mining claims, or by the terms of the mineral license, permit or lease, to post a surety bond not to exceed $20,000 in amount to protect the surface owner against such damage, prior to the commencement of mining operations.

[35 FR 9746, June 13, 1970]

Subpart 3823—Prospecting, Mineral Locations, and Mineral Patents Within National Forest Wilderness

SOURCE: 35 FR 9746, June 13, 1970, unless otherwise noted.

§3823.0–3 Purpose.

This subpart sets forth procedures to be followed by persons wishing to prospect on lands within National Forest Wilderness, and special provisions pertaining to mineral locations and mineral patents within National Forest Wilderness.

§3823.0–5 Definition.

As used in this subpart the term *National Forest Wilderness* means an area or part of an area of National Forest lands designated by the Wilderness Act as a wilderness area within the National Wilderness Preservation System.

§3823.1 Prospecting within National Forest Wilderness for the purpose of gathering information about mineral resources.

(a) The provisions of the Wilderness Act do not prevent any activity, including prospecting, within National Forest Wilderness for the purpose of gathering information about mineral or other resources if such activity is conducted in a manner compatible with the preservation of the wilderness environment. While information gathered by prospecting concerning mineral resources within National Forest Wilderness may be utilized in connection with the location of valuable mineral deposits which may be discovered through such activity and which may be open to such location, attention is directed to the fact that no claim may be located after midnight, December 31, 1983, and no valid discovery may be made after that time on any location purportedly made before that time.

(b) All persons wishing to carry on any activity, including prospecting, for the purpose of gathering information about mineral or other resources on lands within National Forest Wilderness should make inquiry of the officer in charge of the National Forest in which the lands are located concerning the regulations of the Secretary of Agriculture governing surface use of the lands for such activity.

§3823.2 Mineral locations within National Forest Wilderness.

(a) Until midnight, December 31, 1983, the mining laws of the United States and the regulations of this chapter pertaining thereto, including any amendments thereto effective during such period, shall to the same extent as applicable before September 3, 1964, extend to National Forest Wilderness, subject to the provisions of such regulations as may be prescribed by the Secretary of

Agriculture pursuant to section 4(d)(3) of the Wilderness Act.

(b) All mineral locations established after September 3, 1964, and lying within the National Forest Wilderness, shall be held and used solely for mining or processing operations and uses incident thereto, and such locations shall carry with them no rights in excess of those rights which may be patented under the provisions of §3823.3 of this chapter.

(c) All persons wishing to carry on any activity under the mining laws on lands within National Forest Wilderness, on or after September 3, 1964, should make inquiry of the officer in charge of the National Forest in which the lands are located concerning the regulations of the Secretary of Agriculture governing activities to be performed thereon in connection with the locations of mining claims.

§3823.3 Mineral patents within National Forest Wilderness.

(a) Each patent issued under the U.S. mining laws for mineral locations established after September 3, 1964, or validated by discovery of minerals occurring after September 3, 1964, and lying within National Forest Wilderness shall, in accordance with the provisions of section 4(d)(3) of the Wilderness Act:

(1) Convey title to the mineral deposits within the patented lands, together with the right to cut and use so much of the mature timber therefrom as may be needed in the extraction, removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available, and if the timber is cut under sound principles of forest management as defined by the National Forest rules and regulations;

(2) Reserve to the United States all title in or to the surface of the lands and products thereof; and

(3) Provide that no use of the surface of the patented lands or the resources therefrom not reasonably required for carrying on mining or prospecting shall be allowed except as expressly provided in the Wilderness Act.

(b) Each patent to which the provisions of this section are applicable shall contain the express condition that the use of the patented lands shall be subject to regulations prescribed by the Secretary of Agriculture as referred to in §3823.2 of this subpart and that the patented lands shall be held open for reasonable inspection by authorized officers of the U.S. Government for the purpose of observing compliance with the provisions thereof.

§3823.4 Withdrawal from operation of the mining laws.

Effective at midnight, December 31, 1983, subject to valid rights then existing, the minerals in lands within National Forest Wilderness are withdrawn from the operation of the mining laws by virtue of the provisions of section 4(d)(3) of the Wilderness Act.

Subpart 3825—Tohono O'Odham (Formerly Papago) Indian Reservation, Arizona

§3825.0–3 Authority.

(a) The Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461–479), as amended by the Act of August 28, 1937 (50 Stat. 862; 25 U.S.C. 463), revokes departmental order of October 28, 1932, which temporarily withdrew from all forms of mineral entry or claim the lands within the Tohono O'Odham Indian Reservation and restores, as of June 18, 1934, such lands to exploration, location and purchase under the existing mining laws of the United States.

(b) The regulations in this part apply to entries made prior to May 27, 1955. By virtue of the Act of May 27, 1955 (69 Stat. 67; 25 U.S.C. 463) mineral entries may no longer be made within the Tohono O'Odham Indian Reservation.

[35 FR 9747, June 13, 1970, as amended at 62 FR 65378, Dec. 12, 1997]

§3825.1 Mining locations in Tohono O'Odham Indian Reservation in Arizona.

(a) The procedure in the location of mining claims, performance of annual labor and the prosecution of patent proceedings therefor shall be the same as provided by the United States mining laws and regulations thereunder, with the additional requirements prescribed in this section.

(b) In addition to complying with the existing laws and regulations governing the recording of mining locations with the proper local recording officer, the locator of a mining claim within the Tohono O'Odham Indian Reservation shall furnish to the superintendent or other officer in charge of the reservation, within 90 days of such location, a copy of the location notice, together with a sum amounting to 5 cents for each acre and 5 cents for each fractional part of an acre embraced in the location for deposit with the Treasury of the United States to the credit of the Tohono O'Odham Tribe as yearly rental. Failure to make the required annual rental payment in advance each year until an application for patent has been filed for the claim shall be deemed sufficient grounds for invalidating the claim. The payment of annual rental must be made to the superintendent or other officer in charge of the reservation each year on or prior to the anniversary date of the mining location.

(c) Where a mining claim is located within the reservation, the locator shall pay to the superintendent or other officer in charge of the reservation damages for the loss of any improvements on the land in such a sum as may be determined by the Secretary of the Interior to be a fair and reasonable value of such improvements, for the credit of the owner thereof. The value of such improvements may be fixed by the Commissioner, Bureau of Indian Affairs, with the approval of the Secretary of the Interior, and payment in accordance with such determination shall be made within 1 year from date thereof.

(d) At the time of filing with the manager an application for mineral patent for lands within the Tohono O'Odham Indian Reservation the applicant shall furnish, in addition to the showing required under the general mining laws, a statement from the superintendent or other officer in charge of the reservation, that he has deposited with the proper official in charge of the reservation for deposit in the Treasury of the United States to the credit of the Tohono O'Odham Tribe a sum equal to $1 for each acre and $1 for each fractional part of an acre embraced in the application for patent in lieu of annual rental, together with a statement from the superintendent or other officer in charge of the reservation that the annual rentals have been paid each year and that damages for loss of improvements, if any, have been paid.

(e) The Act provides that in case patent is not acquired the sum deposited in lieu of annual rentals shall be refunded. Where patent is not acquired, such sums due as annual rentals but not paid during the period of patent application shall be deducted from the sum deposited in lieu of annual rental. Applications for refund shall be filed in the office of the manager and should follow the general procedure in applications for repayment.

(f) Water reservoirs, charcos, water holes, springs, wells, or any other form of water development by the United States or the Tohono O'Odham Indians shall not be used for mining purposes under the terms of the said Act of August 28, 1937, except under permit from the Secretary of the Interior approved by the Tohono O'Odham Indian Council.

(g) A mining location may not be located on any portion of a 10 acre legal subdivision containing water reservoirs, charcos, water holes, springs, wells or any other form of water development by the United States or the Indians except under a permit from the Secretary of the Interior approved by the Tohono O'Odham Indian Council which permit shall contain such stipulations, restrictions, and limitations regarding the use of the land for mining purposes as may be deemed necessary and proper to permit the free use of the water thereon by the United States or the Tohono O'Odham Indians.

(h) The term *locator* wherever used in this section shall include and mean his successors, assigns, grantees, heirs, and all others claiming under or through him.

[35 FR 9747, June 13, 1970, as amended at 62 FR 65378, Dec. 12, 1997]

LR-8 Location of Mining Claims

(43 CFR 3030 - 3833)

PART 3830—LOCATION OF MINING CLAIMS

Subpart 3831—Rights to Mineral Lands

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3831.1 Manner of initiating rights under locations.

Subpart 3832—Who May Make Locations

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3833.2–3 Consistency between the Federal Land Policy and Management Act, the General Mining Law of May 10, 1872, and the Act of August 10, 1993.
3833.2–4 Contents for evidence of assessment work.
3833.2–5 Contents for a notice of intention to hold claim or site.
3833.2–6 When evidence or notice is not required.
3833.3 Notice of transfer of interest.
3833.4 Failure to file, or to pay maintenance or location fees.
3833.5 Effect of recording and filing.

AUTHORITY: 30 U.S.C. 22 and 28; 43 U.S.C. 1201; 31 U.S.C. 9701; 16 U.S.C. 1901, 1907; 43 U.S.C. 1740 and 1744; 30 U.S.C. 242; 50 U.S.C. Appendix 565; 107 Stat. 60; 107 Stat. 405.

Subpart 3831—Rights to Mineral Lands

§ 3831.1 Manner of initiating rights under locations.

Rights to mineral lands, owned by the United States, are initiated by prospecting for minerals thereon, and, upon the discovery of minerals, by locating the lands upon which such discovery has been made. A location is made by (a) staking the corners of the claim, except placer claims described by legal subdivision where State law permits locations without marking the boundaries of the claims on the ground, (b) posting notice of location thereon, and (c) complying with the State laws, regarding the recording of the location in the county recorder's office, discovery work, etc. As supplemental to the United States mining laws there are State statutes relative to location, manner of recording of mining claims, etc., in the State, which should also be observed in the location of mining claims. Information as to State laws can be obtained locally or from State officials.

(See 38 FR 24650, Sept. 10, 1973)

Subpart 3832—Who May Make Locations

§ 3832.1 Qualifications.

Citizens of the United States, or those who have declared their intention to become such, including minors who have reached the age of discretion and corporations organized under the laws of any State, may make mining locations. Agents may make locations for qualified locators.

[35 FR 9750, June 13, 1970]

Subpart 3833—Recordation of Mining Claims, Mill Sites, and Tunnel Sites and Payment of Service Charges; and Payment of Rental Fees

§ 3833.0–1 Purpose.

The purpose of the regulations is to establish procedures for:

(a) The recordation in the proper BLM office of unpatented mining

claims, mill sites, or tunnel sites on Federal lands;

(b) The filing in the same office of evidence of performance of annual assessment work or of a notice of intention to hold an unpatented mining claim;

(c) The payment in the same office of an annual maintenance fee, if required, for each mining claim, mill site, or tunnel site held by the claimant;

(d) Notifying the proper BLM office of the transfer of an interest in unpatented mining claims, mill sites, or tunnel sites.

(e) These regulations are not intended to supersede or replace existing recording requirements under state law except when specifically changed by the provisions of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1701), and are not intended to make the Bureau office the official recording office for all ancillary documents (wills, liens, judgments, etc.) involving an unpatented mining claim, mill site or tunnel site.

[47 FR 56304, Dec. 15, 1982, as amended at 58 FR 38197, July 15, 1993; 59 FR 44857, Aug. 30, 1994]

§ 3833.0–2 Objectives.

The objectives of these regulations are:

(a) To determine the number and location of unpatented mining claims, mill sites, or tunnel sites located on Federal lands in order to assist in the surface management of those lands and the mineral resources therein;

(b) To remove any cloud on the title to those lands that may exist because they are subject to mining claims that may have been abandoned;

(c) To provide the BLM with information as to the location of active mining claims;

(d) To keep the BLM informed of transfers of interest in unpatented mining claims, mill sites, or tunnel sites.

[47 FR 56304, Dec. 15, 1982]

§ 3833.0–3 Authority.

(a) Sections 314(a) and (b) of the Federal Land Policy and Management Act (43 U.S.C. 1744), as amended by the Act of August 10, 1993 (30 U.S.C. 28f–k, 107 Stat. 405), require the recordation of unpatented mining claims, mill sites, and tunnel sites, and the filing of information concerning annual assessment work performed on unpatented mining claims in the proper BLM office within specified time periods. Section 314(c) of FLPMA provides that a failure to record the required documents within the time limits imposed by the statute constitutes a conclusive abandonment of the mining claim, mill site, or tunnel site, which shall be void.

(b) The Secretary has the general responsibility and authority for the management of Federal lands under 43 U.S.C. 2, 43 U.S.C. 1212, and 43 U.S.C. 1457, and section 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1740).

(c) The General Mining Law of May 10, 1872, section 2319 of the Revised Statutes (30 U.S.C. 22) provides that the exploration, location, and purchase of valuable mineral deposits shall be "under regulations prescribed by law," and section 2478 of the Revised Statutes, as amended (43 U.S.C. 1201), provides that those regulations will be issued by the Secretary.

(d) The Act of August 31, 1951 (31 U.S.C. 9701) and section 304(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734).

(e) Sections 10101–10106 of the Act of August 10, 1993 (Pub. L. 103–66, 107 Stat. 405), require an annual maintenance fee of $100 to be paid to the proper State Office of the Bureau of Land Management for each non-waived mining claim, mill site, or tunnel site. With certain exceptions provided in § 3833.1–6, this fee is in lieu of the requirement to perform and record annual assessment work under 30 U.S.C. 28–28e and section 314(a) of FLPMA. Failure to pay the fee within the time limits prescribed by the Act of August 10, 1993, constitutes a statutory abandonment and forfeiture of the non-waived mining claim, mill site, or tunnel site. Provisions relating to maintenance fees and waivers are contained in §§ 3833.0–3(f), 3833.1–5, 3833.1–6, and 3833.1–7.

(f) Section 2511(e)(2) of the Energy Policy Act of 1992 (30 U.S.C. 242) requires oil shale claim holders to pay an annual fee of $550 per oil shale claim, notwithstanding any other provision of law. The Act of August 10, 1993, specifically states that the maintenance fee provision shall not apply to any oil shale claims for which a fee is required to be paid under Section 2511(e)(2) of the Energy Policy Act of 1992. The $550 fee requirement for oil shale claims remains in effect. The $550 fee is first payable on or before December 31, 1993, and on or before each December 31st thereafter.

(g) The Stockraising Homestead Act of December 29, 1916 (SRHA) (43 U.S.C. 299), as amended by the Act of April 16, 1993 (107 Stat. 60), provides that no person other than the surface owner may locate a mining claim on SRHA lands after October 13, 1993, until a notice of intent to locate has been filed with the proper BLM State Office and the surface owner is notified of the filing.

(1)(i) When a notice of intent to locate a mining claim has been properly filed by a mining claimant, no other person may, until 90 days after the date the notice of intent is filed:

(A) File such a notice with respect to any portions of the lands covered by the first notice;

(B) Explore for minerals or locate a mining claim on any portion of such lands; or

(C) File an application to acquire any interest in any portion of such lands pursuant to Section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719).

(ii) The 90-day exclusive right may be extended by filing a Plan of Operations pursuant to subpart 3809 of this title. The extension runs until the BLM has approved or denied the Plan of Operations.

(2) The mining claimant may not locate mining claims on the lands encompassed by a notice under the Act of April 16, 1993, until at least 30 days after he or she has properly notified the surface owner by registered or certified mail, return receipt requested.

(3) The Act of April 16, 1993, contains numerous other requirements prerequisite to a claimant engaging in mineral exploration and development activities on SRHA lands. These requirements are administered pursuant to subpart 3814 of this title.

(h) The Soldiers' and Sailors' Relief Act of 1940 (50 U.S.C. appendix 565) excuses performance of assessment work by military personnel while they are on active duty, or within 6 months of their release from active duty, or during or within 6 months after their release from any period of hospitalization due to military injuries. The procedures for obtaining a waiver from the performance of assessment work may be found in subpart 3851 of this title.

[42 FR 5300, Jan. 27, 1977, as amended at 44 FR 9722, Feb. 14, 1979; 47 FR 56304, Dec. 15, 1982; 53 FR 48881, Dec. 2, 1988; 58 FR 38197, July 15, 1993; 59 FR 44857, Aug. 30, 1994]

§ 3833.0-5 Definitions.

As used in this subpart:

(a) *FLPMA* means the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701) *et seq.*).

(b) *Unpatented mining claim* means a lode mining claim or a placer mining claim located and held under the General Mining Law of 1872, as amended (30 U.S.C. 21-54), for which a patent under 30 U.S.C. 29 and 43 CFR part 3860 has not been issued.

(c) *Mill site* means any land located under 30 U.S.C. 42 for which patent under 30 U.S.C. 42 and 43 CFR part 3860 has not been issued.

(d) *Tunnel site* means a tunnel located pursuant to 30 U.S.C. 27.

(e) *Owner or claimant* means the person who is, under State or Federal law, the holder of the right to sell or transfer all or any part of an unpatented mining claim, mill site, or tunnel site. The name of the owner and his or her current address shall be identified on all instruments required to be recorded or filed by the regulations in this subpart.

(f) *Federal lands* means any lands or interest in lands owned by the United States, except lands within units of the National Park System, which are subject to location under the General Mining Law of 1872, supra, including, but not limited to, those lands within forest reservations in the National Forest System and wildlife refuges in the National Wildlife Refuge System.

(g) *Proper BLM office* means the Bureau of Land Management State Office listed in § 1821.2-1(d) of this title having jurisdiction over the land in which the claims or sites are located. In Alaska, the Northern District Office's Records and Public Information Unit, located in Fairbanks, may also receive and record documents, filings, and fees for all mining claims, mill sites, and tunnel sites located in the State of Alaska.

(h) *Date of location* or *located* means the date determined by State law in the local jurisdiction in which the unpatented mining claim, mill or tunnel site is situated.

(i) *Copy of the official record* means a legible reproduction or duplicate, except microfilm, of the instrument which was or will be filed under state law in the local jurisdiction where the claim or site is located. It also includes and exact reproduction, duplicate, except microfilm, of an amended instrument which may change or alter the description of the claim or site.

(j) *Affidavit of assessment work* means the instrument required under state law that certifies that assessment work required by 30 U.S.C. 28 has been performed on, or for the benefit of, a mining claim or, if state law does not require the filing of such an instrument, an affidavit evidencing the performance of such assessment work; and

(k) *Notice of intention to hold a mining claim* means an instrument containing the information required in § 3833.2-5 of this title which has been or will be filed under state law in the local jurisdiction indicating that the owner continues to have an interest in the claim.

(l) *Notice of intention to hold a mill or tunnel site* means an instrument containing the information in the form required in § 3833.2-5 of this title indicating that the owner continues to hold an interest in the site.

(m) *File* or *filed* means being received and date stamped by the proper BLM office. For purposes of complying with §§ 3833.1-2, 3833.1-3, 3833.1-5, 3833.1-6, 3833.1-7, or 3833.2, a filing or fee required by any of these sections is timely if received within the time period prescribed by law, or, if mailed to the proper BLM office, is contained within an envelope clearly postmarked by a bona fide mail delivery service within the period prescribed by law and received by the proper BLM State Office by 15 calendar days subsequent to such period, except as provided in § 1821.2-2(e) of this title if the last day falls on a day the office is closed.

(n) *Assessment year* is defined in 30 U.S.C. 28 and commences at 12 o'clock noon on September 1st of each year. For the purpose of complying with the requirements of section 314(a) of the Act, the calendar year in which the assessment year ends is the year for which the evidence of annual assessment work shall be filed.

(o) *Filing period* means the time period during which documents and fees are required to be provided to the proper BLM office. Except for filings and recordings required of a small miner qualifying for a waiver under § 3833.1-7 of this title, filings under FLPMA that would have been due on December 30, 1994, and each December 30 through and including December 30, 1999, are waived effective January 1, 1994, and so long thereafter as the Act of August 10, 1993, is in effect.

(p) *Amended location* means a location that is in furtherance of an earlier valid location and that may or may not take in different or additional unappropriated ground. An amendment may:

(1) Correct or clarify defects or omissions in the original notice or certificate of location; or

(2) Change the legal description, mining claim name, position of discovery or boundary monuments, or similar items.

An amended location notice relates back to the original location notice date. No amendment is possible if the original location is void. An amendment to a notice or certificate of location shall not be used to effect a transfer of ownership of interest or to add owners. Such transfers or additions shall only be filed with the proper State Office of the BLM pursuant to § 3833.3.

(q) *Relocation* means the establishment of a new mining claim, mill site, or tunnel site. A relocation may not be established by the use of an *amended location notice*, but requires a new original location notice or certificate as prescribed by state law.

(r) *Annual filing* means either an affidavit of assessment work or a notice of intention to hold the mining claim, mill site, or tunnel site.

(s) *Authorized officer* means any employee of the Bureau of Land Management to whom authority has been delegated to perform the duties described in this subpart.

(t) *Small miner* means a claimant/owner of a mining claim(s), that meets the requirements of §§ 3833.1-6 and 3833.1-7.

(u) *Age of discretion* means that age at which, pursuant to State law, an individual is legally entitled to manage his or her own affairs, and to enjoy civic rights.

(v) *Maintenance fee* means the annual $100 payment required by the Act of August 10, 1993 (Pub.L. 103-66, 107 Stat. 312), to hold and maintain a mining claim, mill site, or tunnel site. The requirement to pay a maintenance fee does not apply to any claim located after September 29, 1998.

(w) *Location fee* means the one time $25 payment required by the Act of August 10, 1993, for all new mining claims and mill and tunnel sites located upon the public lands on or after August 11, 1993, and before September 30, 1998. The location fee shall be paid at the time the mining claim or site is recorded with the proper BLM office.

(x) *Related party* means:

(1) The spouse and dependent children of the claimant as defined in section 152 of the Internal Revenue Code of 1986, or

(2) A person who controls, is controlled by, or is under common control with the claimant.

(y) *Control* means, as defined in the Act of August 10, 1993, actual control, legal control, and the power to exercise control, through or by common directors, officers, stockholders, a voting trust, or a holding company or investment company, or any other means.

(z) *Forfeiture* means the consequences of an act or failure to act that results in an unpatented mining claim, mill, or tunnel site being deemed to be by operation of law abandoned or null and void. The term has the same meaning whether it is used in the noun form or in the verb form "forfeit" or "forfeited."

(aa) *Returnable* means that a check or negotiable instrument, including a valid credit card order, is received by the authorized officer but not yet processed through the accounting system of the Bureau of Land Management, and can be returned to the originator without processing of a refund check through the United States Treasury pursuant to § 3833.1-1.

(bb) *Refundable* means that a check or negotiable instrument, including a valid credit card order, has been processed through the accounting system of the Bureau of Land Management, and cannot be returned to the originator without the processing of a refund check through the United States Treasury or the crediting to a credit card account pursuant to § 3833.1-1.

[42 FR 5300, Jan. 27, 1977, as amended at 44 FR 9722, Feb. 14, 1979; 47 FR 56304, Dec. 15, 1982; 48 FR 7179, Feb. 18, 1983; 53 FR 48881, Dec. 2, 1988; 55 FR 17754, Apr. 27, 1990; 58 FR 38197, July 15, 1993; 59 FR 44858, Aug. 30, 1994]

§ 3833.0-9 Information collection.

(a) The collections of information contained in subpart 3833 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004-0114. The information will be used to enable BLM to record mining claims, mill sites, and tunnel sites; to maintain ownership records to those claims and sites; to determine the geographic location of the claims and sites recorded for proper land management purposes; and to determine which claims and sites their owner(s) wish to continue to hold under applicable Federal statute. A response is required to obtain a benefit in accordance with Section 314 of FLPMA, as amended, the Act of April 16, 1993 (Public Law 103-23, 107 Stat. 60), and the Act of August 10, 1993 (Public Law 103-66, 30 U.S.C. 28f-k, 107 Stat. 405).

(b) Public reporting burden for this information is estimated to average 8 minutes per response, including time for reviewing instructions, searching existing records, gathering and maintaining the data collected, and completing and reviewing the information collected. Send comments regarding this burden estimate or any other aspect of this collection of information including suggestions for reducing the burden; to the Information Collection Clearance Officer (783), Bureau of Land Management, 1849 C St. NW., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project, 1004-0114, Washington, DC 20503.

[58 FR 38198, July 15, 1993, as amended at 59 FR 44858, Aug. 30, 1994]

§ 3833.1 Recordation of mining claims.

§ 3833.1-1 Refundability of service charges, location fees, rental and maintenance fees.

(a) Service charges submitted for new recordings under § 3833.1-2 are not returnable or refundable after the document has received the processing for which the service charges were paid.

(b) Service charges submitted with documents to be filed pursuant to §§ 3833.2 and 3833.3 are returnable or refundable if, at the time of submission, the affected mining claim or site is determined to be null and void or abandoned by operation of law.

(c) Maintenance and location fees are not returnable or refundable unless the mining claim or site has been determined, as of the date the fees were submitted, to be null and void, abandoned by operation of law, or otherwise forfeited.

(d) Maintenance fees, location fees, or service charges made in duplicate for the same claim or site or otherwise overpaid are returnable or refundable. The money will be returned or refunded to the party who submitted it. The authorized officer may apply the fee to a future year if so instructed by the payor.

(e) Voluntary actions such as relinquishment of claims or sites, or payment of maintenance fees by a qualified small miner, shall not be a qualifying reason for obtaining a refund of such fees previously paid.

[59 FR 44858, Aug. 30, 1994]

§ 3833.1-2 Recordation of mining claims, mill sites and tunnel sites located after October 21, 1976.

(a) The owner of an unpatented mining claim, mill site or tunnel site located after October 21, 1976, on Federal lands, excluding lands within units of the National Park System shall file within 90 days after the date of location of that claim or site in the proper BLM office, a copy of the official record of the notice or certificate of location of that claim or site that was or will be filed under state law. If state law does not require the recordation of a notice or certificate of location of a claim or site, a notice or certificate of location containing the information in paragraph (b) of this section shall be filed. (See § 3734.1(a) of this title for mining claims and sites filed under Pub. L. 84-359 (69 Stat. 681) and § 3821.2 of this title for mining claims and sites filed on O and C lands).

(b) The copy of the notice or certificate filed in accordance with paragraph (a) of this section shall be supplemented by the following additional information unless it is included in the copy:

(1) The name or number of the claim or site, or both, if the claim or site has both;

(2) The name and current mailing address, if known, of the owner or owners of the claim or site;

(3) The type of claim or site;

(4) The date of location;

(5) For all claims or sites a description shall be furnished.

(i) This description shall recite, to the extent possible, the section(s), the approximate location of all or any part of the claim to within a 160 acre quadrant of the section (quarter section), or sections, if more than one is involved, and the township, range, meridian and State obtained from an official survey plat or other U.S. Government map showing either the surveyed or protracted U.S. Government grid, whichever is applicable.

(ii) The location of the claims or sites shall be depicted on either a topographic map published by the U.S. Geological Survey or by a narrative or a sketch describing the claim or site with reference by appropriate tie to some topographic, hydrographic, or man-made feature. Such map, narrative description, or sketch shall set forth the boundaries and position of the individual claim or site with such accuracy as will permit the authorized officer of the agency administering the lands or mineral interests in such lands to identify and locate the claims or sites on the ground.

(iii) More than one claim or site may be shown on a single map or described in a single narrative or sketch if they are located in the same general area, so long as the individual claims or sites are clearly identified;

(6) In place of the requirements of paragraph (b)(5) of this section, an approved mineral survey may be supplied. A mining claim described by legal subdivisions, section, township, range, meridian and State fulfills the requirements of paragraph (b)(5) of this section.

(7) Nothing in the requirements for a map and description found in this section shall require the owner of a claim or site to employ a professional surveyor or engineer.

(c)(1) Beginning on October 13, 1993, mining claims cannot be located on lands patented under the Stockraising Homestead Act of 1916, as amended by the Act of April 16, 1993 (107 Stat 60); until the claimant has first filed a notice of intent to locate with the proper BLM State Office and has served a copy of the notice upon the surface owner(s) of record, by registered or certified mail, return receipt requested. Such notice shall be in the form and contain the information required in paragraph (d) of this section.

(2) The claimant shall wait 30 days after such service before entering the lands to locate any mining claims on the Stockraising Homestead Act lands.

(3) The authorized officer will not record any mining claim located on lands patented under the Stockraising Homestead Act, as amended, unless the claimant has complied with the requirements of this section, and all certificates or notices of location will be returned to the claimant without further action.

(4) The surface owner of land patented under the Stockraising Homestead Act, as amended, is exempt from the requirements of this section.

(5) All mining claims located on Stockraising Homestead lands are subject to the requirements of the Act of April 16, 1993. These additional requirements are found in subpart 3814 of this title.

(d) A separate notice of intent shall be filed and recorded in the appropriate BLM State Office for each separate surface ownership in an individual State.

(1) Each notice of intent submitted shall be accompanied by evidence of title of the surface owner(s). Evidence of title shall be either a certificate of title or abstract of title certified by a person, association, or corporation authorized by State law to execute such a certificate within that State, and acceptable to the Bureau of Land Management.

(2) The notice of intent shall contain:

(i) The names(s), mailing address(es), and telephone number(s) of the person(s) filing the notice;

(ii) The names(s), mailing address(es), and telephone number(s) of the surface owner(s);

(iii) The legal description of the lands to which the notice applies, to the nearest 5-acre subdivision or lot;

(iv) The total number of acres under the specific notice of intent filed to the nearest whole acre;

(v) A brief description of the proposed mineral activities;

(vi) A map and legal description of the lands to be subject to mineral exploration, including access route(s);

(vii) The name, mailing address, and telephone number of the person managing such activities; and

(viii) A statement of the dates on which such activities will take place.

(3) The legal description shall be based on the public land survey or on such other description as is sufficient to permit the authorized officer accurately to record the notice on the BLM land status records (i.e., to the nearest 5-acre subdivision or lot).

(4) Upon acceptance of a notice of intent by the authorized officer, the notice of intent will be entered upon the official land status records of the Bureau of Land Management.

(5) The total acreage covered at any time by notices of intent filed by any person and by affiliates of such person may not exceed 6,400 acres of such lands in any one State and 1,280 acres of such lands nationwide for a single surface owner.

(6) If the surface owner(s) sells all or part of the surface during the authorized exploration period, the person who filed the notice of intent is not required to notify the new surface owner(s) prior to entry during the authorized exploration period.

[42 FR 5300, Jan 27, 1977, as amended at 44 FR 9722, Feb. 14, 1979; 47 FR 56305, Dec. 15, 1982; 48 FR 7179, Feb. 18, 1983; 55 FR 17754, Apr. 27, 1990; 58 FR 38198, July 15, 1993; 59 FR 44859, Aug. 30, 1994]

§ 3833.1-3 Service charges, rental fees, maintenance fees, and location fees; form of remittance and acceptance.

(a) *Payment and acceptance policy.* All service charges, maintenance fees, and location fees shall be payable by United States currency, postal money order, or negotiable instrument payable in United States currency, and shall be made payable to the Department of the Interior—Bureau of Land Management, or by a valid credit card acceptable to the Bureau of Land Management. A check or negotiable instrument, including credit cards submitted for payment of charges and/or fees, for which payment is not honored by the issuing authority, and such refusal is not an error of the issuing authority, will be deemed to be a nonpayment of the charges or fees for which the check or negotiable instrument, including a credit card order, was tendered. See § 3833.1-4 (f) and (g) for payments made by credit cards or from Declining Deposit Accounts.

(b) *Recordation of new mining claims, mill sites, or tunnel sites with the Bureau of Land Management.* (1) New location notices or certificates submitted for recording pursuant to § 3833.1-2 that are not accompanied by full payment of the maintenance and location fees required by § 3833.1-4 or 3833.1-5 will not be accepted, and the submittal will be returned without further action by the authorized officer. The claimant may resubmit the filings with the proper payment of service charges and fees within the same 90-day filing period referred to in § 3833.1-2(a).

(2) Failure to provide full payment of service charges set forth in § 3833.1-4 will be curable for new location notices or certificates submitted for recording pursuant to § 3833.1-2 when the proper maintenance and location fees have been submitted. Such documents will be noted as being recorded on the date received provided that the claimant submits the proper service charge either within 30 days of receipt of a deficiency notice sent by the authorized officer, or on or before the 90th day of the filing period referred to in 3833.1-2(a), whichever date is later.

(3) If the proper service charges have not been tendered pursuant to paragraph (b)(2), and if the claimant has not provided written instructions regarding the application of the funds received with the original filing, the authorized officer will apply such funds and serialize the claims in the order received. All notices or certificates for which there are insufficient funds to cover all service charges and maintenance and location fees will be returned to the claimant.

(c) *Mining claims, mill sites, and tunnel sites recorded and serialized by the Bureau of Land Management.* (1) Failure to provide full payment of service charges set forth in § 3833.1-4 will be curable for documents and filings made pursuant to §§ 3833.2 and 3833.3 and amended locations filed under § 3833.1. Such documents and filings will be noted as being recorded on the date initially received, provided that the claimant submits the proper service charge within 30 days of receipt of a deficiency notice from the authorized officer. Failure to submit the proper service charge as required by this paragraph will cause filings made pursuant to §§ 3833.2 and 3833.3 and amended locations filed under § 3833.1 to be rejected and returned to the claimant/owner. If a payment is received that partially covers the claims submitted, the payment shall be applied to mining claims and sites in ascending numerical order of serialization.

(2) If a claimant fails to submit the proper maintenance fees on or before each August 31, the authorized officer will apply the fees received to existing recorded and serialized mining claims and sites in ascending numerical order of serialization, unless otherwise directed by the claimant. The authorized officer will note the deficient fees as being paid on the original date received, provided that the claimant submits the proper fees within 30 days of receipt of a deficiency notice from the authorized officer, if that much time remains before August 31. If there are less than 30 days before August 31, the

correct fees shall be filed (see § 3833.0–5(m)) by such claimant on or before the August 31 deadline. Failure to submit the proper fees will cause the forfeiture of remaining claims or sites by the claimant/owner.

[59 FR 44859, Aug. 30, 1994]

§ 3833.1–4 Service charges and location fees.

(a) Each notice or certificate of location of a mining claim, mill site, or tunnel site filed for recordation shall be accompanied by a non-refundable service charge of $10.00.

(b) Each notice or certificate of location of a mining claim, mill site, or tunnel site that is located on or after August 11, 1993, and before September 30, 1998, shall, when filed with BLM, be accompanied by a one time nonrefundable location fee of $25.

(c) Annual filings submitted pursuant to § 3833.2 shall be accompanied by a nonrefundable service charge of $5.00 for each mining claim, mill site, or tunnel site. A service charge is not required to accompany the rental fee submitted in lieu of assessment work or Notice of Intent to Hold as required by § 3833.1–5 or the certified statement of exemption required to be filed by § 3833.1–7.

(d) Amendments to a previously recorded notice or certificate of location shall be accompanied by a nonrefundable service charge of $5.00 for each mining claim, mill site, or tunnel site.

(e) Each transfer of interest document filed pursuant to § 3833.3 shall be accompanied by a nonrefundable service charge of $5.00 for each mining claim, mill site, or tunnel site affected.

(f) The claimant/owner may authorize the BLM to charge payment of service charges, maintenance fees, and location fees to his or her credit card under § 3833.1–3(a) by transmitting a facsimile authorization bearing the signature of the claimant/owner to the authorized officer, or the authorized officer may accept such authorization by telephone if the identity of the claimant/owner is established to the satisfaction of the authorized officer.

(g) The claimant/owner may also maintain a declining deposit account with the State Office of the BLM where the mining claims and sites are recorded for the payment of service charges, maintenance fees, and location fees. The authorized officer may deduct the necessary service charges and fees from or add overpayments to such account only at the direction of the claimant/owner.

[58 FR 38196, July 15, 1993, as amended at 59 FR 44860, Aug. 30, 1994]

§ 3833.1–5 Maintenance fees.

Except as provided in §§ 3833.0–3(f), 3833.1–6, and 3833.1–1 (d) and (e), each claimant shall pay a nonrefundable maintenance fee of $100 for each mining claim, mill site, or tunnel site to the proper BLM office for each specified assessment year for which the claimant desires to hold the mining claim, mill site, or tunnel site. The assessment years covered by the Act of August 10, 1993, begin at 12 o'clock noon on September 1, 1994, and end at 12 o'clock noon on September 1, 1999.

(a)(1) The initial $100 nonrefundable maintenance fee for the assessment year in which the mining claim or site is located shall be paid for each mining claim, mill site, or tunnel site at the time of its filing with BLM pursuant to section 314(b) of FLPMA and § 3833.1–2. If such claims or sites are located prior to an August 31, and the notice of location is properly filed within the FLPMA time frame but after August 31, then the $100 fee that was due on August 31 for the succeeding assessment year shall be paid at the time of filing the location notice along with the initial $100 fee.

(2) The initial maintenance fee described in paragraph (1) is not subject to the waiver provisions contained in §§ 3833.1–6 and 3833.1–7.

(b) Under the Act of August 10, 1993, a nonrefundable maintenance fee of $100.00 for each mining claim, mill site, or tunnel site shall be paid annually on or before August 31 for the subsequent assessment year beginning at 12 o'clock noon on September 1 of that year. The first payment will be due on or before August 31, 1994, with payments due for each August 31 through August 31, 1998. At the time of payment, the claimant/owner shall submit a list of claim names and BLM serial numbers assigned to each mining claim

or site for which the maintenance fee is being paid.

(c) There will be no proration of rental or maintenance fees for partial years of holding of mining claims, mill sites, or tunnel sites.

(d) A small miner may, under the waiver provisions of §§ 3833.1–6 and 3833.1–7, perform assessment work and file the affidavit of labor pursuant to § 3833.2 in lieu of paying the rental or maintenance fee.

(e) The owner of an oil shale placer claim shall pay the required $550 annual rental fee to the proper BLM State Office on or before each December 31.

(f) The payment of the required maintenance fee for a mining claim, mill site, or tunnel site satisfies the requirement to file an affidavit of assessment work or a notice of intention to hold pursuant to § 3833.2.

(g) If a waived mining claim or site is transferred in total or in part to a party not qualified for a waiver, the waiver is forfeited for the mining claim or site or portion of interest therein transferred to the unqualified party. The maintenance fee for the previously waived claim or site will be paid for the assessment year in which the transfer was effective under State law pursuant to § 3833.3. The applicable deadline is the August 31 on or immediately after which the transfer is effective under State law.

(h) The Secretary will adjust the location and maintenance fees every 5 years, based upon the Consumer Price Index (CPI) as published by the Bureau of Labor Statistics, Department of Labor. The Secretary may adjust the location and maintenance fees sooner, if he deems it reasonable, based upon changes in the CPI.

(1) Public notice of any adjustment of maintenance or location fees will be provided by July 1 of the assessment year prior to the assessment year to which the adjustment becomes effective.

(2) Any such adjustment of maintenance or location fees to reflect changes in the CPI will be payable no later than the second August 31 following the July 1 by which the notice of the adjustment was given.

[59 FR 44860, Aug. 30, 1994]

§ 3833.1–6 Maintenance fee waiver qualifications under the Act of August 10, 1993, and other exceptions—applicable from 12 o'clock noon on September 1, 1993, until 12 o'clock noon September 1, 1999.

A small miner may, under certain conditions described in this section and in § 3833.1–7, perform the assessment work required under 30 U.S.C. 28–28e and record it pursuant to Section 314(a) of FLPMA and § 3833.2 in lieu of paying the maintenance fee. Assessment work shall conform to the requirements contained in subpart 3851 of this title.

(a) In order to qualify for a waiver of the maintenance fee requirements, a small miner shall meet all of the following conditions:

(1) The claimant and all related parties shall hold no more than 10 mining claims, mill sites, and tunnel sites, or any combination thereof, on Federal lands in the United States on the date the payment is due, which is each August 31. For purposes of determining the small miner waiver, oil shale claims shall not be counted toward the 10 claim limitation for the small miner waiver of the $100 maintenance fee. A claimant who owns 10 or fewer claims, mill sites, and tunnel sites, and otherwise meets the requirements of this section, is not precluded from paying the maintenance fee in addition to filing for a small miner waiver.

(2) All mining claims and sites held by a claimant and all related parties shall be counted toward the 10 claim and site limit.

(3) Mill and tunnel sites of a qualified small miner, if listed upon the exemption certificate along with the affected lode and placer mining claims, are waived from payment of the maintenance fee.

(b) Mining claims and sites that are undergoing final reclamation, as approved by the authorized officer pursuant to subparts 3802, 3809, or 3814 of this title, with no intent by the owner thereof to continue mining, milling, or processing operations upon or under the mining claims or sites, are excused from payment of the maintenance fees. The owner shall file a certified statement by August 31 in the proper BLM office attesting to the reclamation status of the affected mining claims and/

or sites, with reference to a reclamation plan approved by the authorized officer for plan-level activities or submitted in consultation with the authorized officer for notice-level activities, and to his or her intent to place them into permanent closure. If the surface is managed by an entity other than BLM, the claimant shall submit evidence of a final reclamation plan that conforms to the requirements of the managing entity. A certified statement of such intent and reclamation shall be filed pursuant to § 3833.1-7. The number of mining claims or sites that may properly qualify for a reclamation waiver pursuant to this paragraph is not restricted to a 10-claim limit.

(c) Pursuant to the Soldiers' and Sailors' Relief Act (50 U.S.C. Appendix 565), military personnel on active duty status may, under certain conditions, qualify for an exemption from the performance of assessment work and the payment of maintenance fees. See §§ 3833.1-7(e)(2) and 3851.6 of this title.

(d) Under the following circumstances, a waiver may be obtained from the payment of the maintenance fee for mining claims and sites:

(1) The claimant has received a declaration of taking or a notice of intent to take from the National Park Service pursuant to Sections 6 and 7 of the Act of September 28, 1976, as amended (16 U.S.C. 1905, 1906), or the Act of December 2, 1980, as amended (16 U.S.C. 3192); or the claimant has otherwise been denied access by the United States to his/her mining claims or sites.

(2) The claimant shall file proof of the above conditions for exemption, attested to as a certified statement, pursuant to § 3833.1-7, with the proper BLM office by the August 31 immediately preceding the assessment year for which a waiver is sought.

(3) The certified statement required by paragraph (d)(2) of this section, serves as a notice of intention to hold as to mining claims and sites for which the exemption is sought. In such cases, the payment of the $5 service charge per claim or site is due upon filing the certification statement.

(e) Payment of the maintenance fee for mining claims covered by a deferment of assessment work granted by the authorized officer pursuant to 30 U.S.C. 28 (b)-(e) and subpart 3852 of this title may be deferred during the period for which the deferment is granted. Deferments are governed by the following rule. If a petition for a deferment of assessment work, as required by § 3852.2 of this title, is filed with the proper BLM office on or before August 31 for a given year, the maintenance fee need not be paid on the claims listed in the petition for deferment until the authorized officer has acted upon the petition.

(1) If the petition is granted, maintenance fees for the claims are deferred for the upcoming assessment year. At the expiration of the deferment, all deferred fees shall be paid within 30 days of the end of the deferment, unless the claimant/owner qualifies as a small miner. If the claimant/owner qualifies as a small miner, all deferred assessment work shall be performed as provided in § 3852.5 of this title upon expiration of the deferment.

(2) If the petition for deferment is denied by the authorized officer, the maintenance fees shall be paid within 30 days of receipt of the decision of the authorized officer denying the petition for deferment. Failure to pay the maintenance fees owed will result in the forfeiture of the claims contained within the petition.

(f) On mining claims for which an application for a mineral patent has been filed, and the mineral entry has been allowed, the payment of the maintenance fee is excused for the assessment years during which assessment work is not required pursuant to § 3851.5 of this title. However, no refund of previously deposited maintenance fees will be made to the mineral patent applicant.

[59 FR 44861, Aug. 30, 1994]

§ 3833.1-7 Filing requirements for the maintenance fee waiver and other exceptions.

(a) If no change in status has occurred, a small miner exemption certification previously filed for the assessment year ending at noon on September 1, 1994, under the Act of October 5, 1992 (Pub. L. 102-381, 106 Stat. 1374), and the pertinent regulations in effect on August 31, 1993, will be considered a proper certification filing for a waiver of payment of the maintenance fee due on August 31, 1994.

(b) The affidavit of assessment work performed by a small miner claiming a maintenance fee waiver shall be filed with the proper BLM office pursuant to § 3833.2 and shall meet the requirements of § 3833.2-4.

(c) For mining claims and sites covered by a waiver, the filing of a waiver certification pursuant to any of paragraphs (a), (d), (e), or (f) of this section will satisfy the requirements for filing of a notice of intention to hold pursuant to § 3833.2-5, when such notice of intention to hold is otherwise required. In such a case the payment of the $5 service charge per claim/site for processing the notice of intention to hold is due upon filing of the waiver statement.

(d) In order to hold mining claims or sites for the assessment year beginning at 12 o'clock noon on September 1, 1994, each small miner shall file a waiver certification on or before August 31, 1994. Each small miner shall file a waiver certification on or before August 31 each year thereafter to hold the claims each assessment year beginning at 12 o'clock noon on September 1 of the calendar year the certification is due, through August 31, 1998. The small miner shall document, as provided in this paragraph (d), the claimed waiver for each assessment year a small miner's waiver is claimed, certified, and attested to under penalty of 18 U.S.C. 1001. The statement shall contain:

(1) The mining claim and site names and BLM serial numbers assigned to the mining claims and sites held by the small miner;

(2) A declaration by the claimant and all related parties that they own no more than 10 mining claims and sites in total nationwide on the date the waiver statement is due;

(3) A declaration that specifies that the assessment work requirements have been or will be completed by the date the payment is due, which is each August 31, for the assessment year just ending;

(4) The names and addresses of all owners maintaining an interest in the mining claims and sites; and

(5) The signatures of all the owners of the mining claims and sites for which a waiver is claimed.

(e) Pursuant to the Soldiers' and Sailors' Relief Act, and § 3851.6 of this title, a military person entering active service may file, or cause to be filed, in the proper BLM office, a notice of his or her entry into active military service.

(1) The filing of the notice excuses the person from performing assessment work or paying the maintenance fees until 6 months have passed from the person's release from active duty status, or until 6 months have passed after release from a military hospital, whichever is later. To be excused from paying the maintenance fee, the person cannot hold the subject claim or site with a related party, as defined in paragraph 3833.0-5(x), who does not also qualify under the Soldiers' and Sailors' Relief Act.

(2) The notice must be filed in the assessment year that the person entered active duty status, or if active duty began prior to August 30, 1994, the notice must be filed in the assessment year that he or she wishes the benefits provided in paragraph (e)(1) of this section to take effect. If the person previously filed a notice under the Soldiers' and Sailors' Relief Act to be excused from performing assessment work, and remains qualified under that Act, he or she will automatically be exempt from paying the maintenance fee.

(3) The performance of assessment work or the payment of maintenance fees shall resume in the assessment year next following the assessment year during which the person was released from active duty or a military hospital, whichever is later.

(4) The notice shall be filed as a certified statement pursuant to paragraph (d) of this section, and shall list all mining claims and sites affected by claim/site name and BLM serial number.

[59 FR 44861, Aug. 30, 1994; 59 FR 47815, Sept. 19, 1994]

§ 3833.2 Annual filings.

§ 3833.2-1 National Park System lands.

(a) For all mining claims, mill sites, and tunnel sites located within a unit of the National Park System that was recorded on or before September 28, 1977, except as provided under the Act of October 5, 1992, an annual filing shall be submitted to the proper BLM office on or before December 30 of each succeeding calendar year thereafter.

(b) Even though the National Park Service, except under certain limited circumstances described in 36 CFR part 9, subpart A, does not permit surface disturbing actions to occur in units of the National Park System, a notice of intent to hold should be filed for mining claims and sites located within these units. If the owner has received National Park Service approval for surface disturbing actions under 36 CFR part 9, subpart A, either a notice of intent or an affidavit of assessment work, as appropriate, should be filed.

(c) The provisions of this section shall apply to all mining claims, mill sites, and tunnel sites included in a unit of the National Park System because of an enlargement of the said unit after September 28, 1976.

(d) Evidence of annual assessment work for mining claims, mill sites, and tunnel sites located in a unit of the National Park System shall be in the form prescribed by § 3833.2-4 of this Title. A notice of intention to hold such a claim or site shall be in the form prescribed in § 3833.2-5 of this title.

(e) The authorized officer will forward copies of annual filings on, and will periodically provide the status of, mining claims, mill sites, and tunnel sites located within a unit of the National Park System to the proper National Park Service office.

[53 FR 48881, Dec. 2, 1988, as amended at 58 FR 38201, July 15, 1993]

§ 3833.2-2 Other Federal lands.

Unpatented mining claims, mill sites, and tunnel sites located on Federal lands which are not within a unit of the National Park System except as provided in §§ 3833.1-5 through 3833.1-7, are subject to the following annual filing requirements:

(a) If a mining claim, mill site, or tunnel site located on or before October 20, 1976, was recorded in the proper BLM office prior to January 1, 1978, a notice of intention to hold or evidence of annual assessment work shall be filed in the proper BLM office on or before December 30, of the calendar year following the calendar year of its recordation, and of each calendar year thereafter.

(b) All owners of mining claims, mill sites, or tunnel sites located on or before October 20, 1976, and recorded in the proper BLM office on or after January 1, 1978, and on or before October 22, 1979, shall have filed a notice of intention to hold or evidence of annual assessment work in the proper BLM office on or before October 22, 1979, and on or before December 30 of each calendar year after 1979.

(c) Owners of mining claims, mill sites, and tunnel sites located on or after October 21, 1976, shall file a notice of intention to hold or evidence of annual assessment work in the proper BLM office on or before December 30 of the calendar year following the calendar year of the location of the mining claims, mill site, or tunnel site.

(d) Evidence of annual assessment work shall be in the form prescribed in § 3833.2-4 of this title. A notice of intention to hold shall be in the form prescribed in § 3833.2-5 of this title.

[53 FR 48881, Dec. 2, 1988, as amended at 58 FR 38201, July 15, 1993]

§ 3833.2-3 Consistency between the Federal Land Policy and Management Act, the General Mining Law of May 10, 1872, and the Act of August 10, 1993.

(a) The Federal Land Policy and Management Act requires that a notice of intention to hold or evidence of annual assessment work be filed on or before December 30 of each calendar year following the calendar year in which the mining claim, mill site, or tunnel site was located. To comply with the requirements of the Act for mining claims, mill sites, or tunnel sites located between September 1 and December 31 of a given calendar year, the claimant shall submit an annual filing on or before December 30, of the following calendar year for each location to prevent the mining claim, mill site, or tunnel site from being declared abandoned and void by operation of law.

(b) Evidence of assessment work filed under this subpart between January 1 and the following December 30 of the same calendar year shall be deemed to have been filed during that calendar year, regardless of what assessment year that work fulfilled under State law.

(c) Notice of intention to hold a mining claim, mill site, or tunnel site may be filed at the election of the owner, regardless of whether the assessment work has been suspended, deferred, or not yet accrued. However, the owner shall have filed with the Bureau of Land Management the same documents which have been or will be recorded with the local recordation office. There is no requirement to file a notice of intent to hold for a mill site or a tunnel site with the local recordation office. A notice of intention to hold a mining claim, mill site, or tunnel site shall be effective only to satisfy the filing requirement for the calendar year in which the notice is filed. The filing of a notice of intention to hold with the Bureau of Land Management shall not relieve the owner of complying with Federal and State laws pertaining to the performance of assessment work.

(d) The Act of August 10, 1993, does not affect the requirements to do assessment work in the assessment year beginning at 12 o'clock noon on September 1, 1999, or to make annual filings on or before December 30, 2000, pursuant to §§ 3833.2 and 3851.1.

(e) For mining claims and sites located on or after September 1, 1998, and on or before September 29, 1998, and for which the required $100 maintenance fee was paid at the time of recording pursuant to § 314(b) of FLPMA and § 3833.1-2, payment of the maintenance fee holds the claims or sites through at least September 1, 1999.

[53 FR 48882, Dec. 2, 1988, as amended at 58 FR 38201, July 15, 1993; 59 FR 44862, Aug. 30, 1994]

§ 3833.2-4 Contents for evidence of assessment work.

Evidence of annual assessment work shall be in the form of either;

(a) An exact legible reproduction or duplicate, except microfilm of the evidence of assessment work which was performed under state law and was or will be filed for record pursuant to section 314(a) of the Act in the local jurisdiction of the state where the claim or group of claims is located and recorded setting forth the additional information:

(1) The Bureau of Land Management serial number assigned to each claim upon filing of the notice, certificate of location in the proper BLM office. Filing the serial number shall comply with the requirement in the act to file an additional description of the claim.

(2) Any change in the mailing address, if known, of the owner or owners of the claim or claims; or

(b) An exact legible reproduction or duplicate, except microfilm, of the detailed report concerning geological, geochemical and geophysical surveys provided for by the Act of September 2, 1958 (30 U.S.C. 28-1) which has been or will be filed for record pursuant to section 314(a)(1) of the Act in the local jurisdiction of the State where the claim or group of claims is located and recorded setting forth the following additional information:

(1) The Bureau of Land Management serial number assigned to each claim upon filing in the proper BLM office of a copy of the official record of the notice or certificate of location or patent application; and

(2) Any change in the mailing address, if known, of the owner or owners of the claim.

[42 FR 5300, Jan. 27, 1977, as amended at 44 FR 9723, Feb. 14, 1979; 47 FR 56306, Dec. 15, 1982. Redesignated at 53 FR 48881, Dec. 2, 1988]

§ 3833.2-5 Contents for a notice of intention to hold claim or site.

(a) A notice of intention to hold a mining claim or group of mining claims may be filed at the election of the owner, regardless of whether the assessment has been suspended, deferred or not yet accrued. However, the claimant shall file with the Bureau of Land Management the same documents which have been or will be recorded with the county or local office of recordation. A notice of intention to hold a mining claim shall be effective only to satisfy the filing requirement for the year (as specified in § 3833.0-5 of this title), in which the notice is filed. The filing of a notice with the Bureau of Land Management shall not relieve the owner of complying with Federal and state laws pertaining to the performance of annual assessment work.

(b) A notice of intention to hold a mining claim or group of mining claims shall be in the form of either:

(1) An exact legible reproduction or duplicate, except microfilm, of an instrument, signed by the owner of the claim of his/her agent, which was or will be filed for record pursuant to section 314(a)(1) of the Act in the local jurisdiction of the State where the claim is located and recorded setting forth the following information:

(i) The Bureau of Land Management serial number assigned to each claim upon filing in the proper BLM office of a copy of the notice or certificate of location. Citing the serial number shall comply with the requirement in the Act to file an additional description of the claim;

(ii) Any change in the mailing address, if known, of the owner or owners of the claim;

(2) A reference to the decision on file in the proper BLM office by date and serial number which granted a deferment of the annual assessment work.

(3) A reference to a pending petition for deferment of the annual assessment work required by 30 U.S.C. 28 by date of filing and serial number and with the proper BLM office.

(c) A notice of intention to hold a mill or tunnel site or group of mill or tunnel sites shall be in the form of a letter or other notice signed by the owner(s) of such sites or their agent(s) setting forth the following information:

(1) The Bureau of Land Management serial number assigned to each site upon filing in the proper BLM office of a copy of the official record of the notice or certification of location;

(2) Any change in the mailing address, if known, of the owner(s) of the site(s).

[47 FR 56306, Dec. 15, 1982; 48 FR 7179, Feb. 18, 1983. Redesignated at 53 FR 48881, Dec. 2, 1988]

§ 3833.2–6 When evidence or notice is not required.

Evidence of annual assessment work performed to hold a mining claim or a notice of intention to hold a mill site need not be filed on unpatented mining claims or mill sites if mineral entry under a mineral patent application has been allowed. The owner of that mining claim or mill site is exempt from the filing requirements of § 3833.2 and the payment of maintenance fees under § 3833.1–5 as of the date mineral entry is allowed.

[59 FR 44862, Aug. 30, 1994]

§ 3833.3 Notice of transfer of interest.

(a) Whenever the owner of an unpatented mining claim, mill site or tunnel site, which has been recorded in accordance with § 3833.1, sells, assigns, or otherwise conveys all or any part of his interest in the claim, his transferee shall file in the proper BLM office within 60 days after the completion of the transfer the following information:

(1) The serial number assigned to the claim by the authorized officer upon filing of a copy of the official record of the notice or certificate of location in the proper BLM office: and

(2) The name and mailing address of the person(s) to whom an interest in the claim has been sold, assigned, or otherwise transferred.

(3) A copy of the legal instrument or document that operates under State law to transfer the interest in the claim being sold, assigned, or otherwise transferred.

(b) Whenever any person acquires an interest through inheritance in an unpatented mining claim, mill site, or tunnel site recorded in accordance with § 3833.1, he shall file in the proper BLM office within 60 days after completion of the transfer the information required by paragraph (a) of this section.

(c) The filing of a transfer of interest, when properly executed and recorded under State law, is placed on the BLM record when it is filed with the proper BLM office. The transfer will be deemed to have taken place on its effective date under State law.

[42 FR 5300, Jan. 27, 1977, as amended at 55 FR 17754, Apr. 27, 1990; 58 FR 38201, July 15, 1993; 59 FR 44862, Aug. 30, 1994]

§ 3833.4 Failure to file, or to pay maintenance of location fees.

(a)(1) The failure to make annual filings required by §§ 3833.2–1 and 3833.2–2 on or before the December 30 immediately following the August 31 by which the small miner filed for a waiver of payment of the maintenance fee, shall conclusively constitute a forfeiture of the mining claim or site.

(2) Failure to record the notice or certificate of location required by § 3833.1–2(a), § 3734.1(a), or § 3821.2 of this title, or failure to pay the maintenance or location fees required by §§ 3833.1–4, 3833.1–5, and 3833.1–7, or failure to file the documents required by § 3833.1–7 (b) through (d) within the time periods prescribed therein for claimants who also fail to pay the maintenance fee, shall be deemed conclusively to constitute a forfeiture of the mining claim, mill site, or tunnel site.

(3) Claimants who fail to pay the maintenance fee, but file a waiver certification under § 3833.1–7, shall perform the assessment work required by subpart 3851 of this title by the waiver statement filing deadline, or the mining claims under the invalid waiver certification will be conclusively deemed forfeited for failure to pay the maintenance fee on time.

(4) Failure to list the 10 or fewer mining claims and/or sites for which the fee is requested to be waived on the applicable certification document filed pursuant to 3833.1–6 or 3833.1–7 will result in the affected mining claims and/or sites being deemed abandoned by the owner or owners thereof.

(b) Failure to file the complete information required in §§ 3833.1–2(b), 3833.1–7(d)–(f), 3833.2–4(a), 3833.2–4(b), 3833.2–5(b) and 3833.2–5(c), when the document is otherwise filed on time, shall not be conclusively deemed to constitute an abandonment or forfeiture of the claim or site, but such information shall be submitted within 30 days of receipt of a notice from the authorized officer calling for such information. Failure to submit the information requested by the decision of the authorized officer shall result in the mining claim, mill site, or tunnel site being deemed abandoned by the owner.

(c) Failure to record a transfer of interest under § 3833.3 will result in the Bureau of Land Management refusing to recognize the interest acquired by the transferee or to serve notice of any action, decision, or contest on the unrecorded owner.

(d) The fact that an instrument is filed in accordance with other laws permitting filing for record thereof and is defective or not timely filed for record under those laws shall not be considered failure to file under this subpart. The fact that an instrument is filed for record under this subpart by or on behalf of some, but not all of the owners of the mining claim, mill or tunnel site shall not affect the validity of this filing.

(e) Any mining claim deemed abandoned under section 314(c) of the Act for failure to file an instrument in the local jurisdiction of the State where the claim is located pursuant to section 314 (a)(1) and (b) of the Act, shall not be validated by filing the instrument with the BLM in accordance with § 3833.1, 3833.2–1, and 3833.2–2 of this title, and such instrument is ineffective even though the claim may currently be shown to exist in the BLM records.

(f) Title IV of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 188(f)) provides that where an unpatented oil placer mining claim validly located prior to February 24, 1920, which has been or is currently producing or is capable of producing oil or gas, has been or is hereafter deemed conclusively abandoned for failure to file timely the required instruments or copies of instruments required by section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744), and it is shown to the satisfaction of the authorized officer that such failure was inadvertent, justifiable, or not due to lack of reasonable diligence on the part of the owner, the authorized officer may issue, for the lands covered by the abandoned unpatented oil placer mining claim, a noncompetitive oil and gas lease consistent with the provisions of section 17(e) of the

Mineral Leasing Act (30 U.S.C. 226(e)) to be effective from the statutory date the claim was conclusively abandoned. The conditions and requirements for issuance of such leases are contained in § 3108.2–4 of this title.

[44 FR 9723, Feb. 14, 1979, as amended at 47 FR 56307, Dec. 15, 1982; 48 FR 7179, Feb. 18, 1983; 49 FR 30450, July 30, 1984; 53 FR 48882, Dec. 2, 1988; 55 FR 17754, Apr. 27, 1990; 58 FR 38201, July 15, 1993; 59 FR 44862, Aug. 30, 1994]

§ 3833.5 Effect of recording and filing.

(a) Recordation or application involving an unpatented mining claim, mill site, or tunnel site by itself shall not render valid any claim which would not be otherwise valid under applicable law and does not give the owner any rights he is not otherwise entitled to by law.

(b) Compliance with the requirements of this subpart shall be in addition to and not a substitute for compliance with the other requirements of Groups 3700 and 3800 of this title, and with laws and regulations issued by any State or other authority relating to locating, recording, and maintenance of mining claims, mill sites, and tunnel sites located, held, and maintained upon the public lands of the United States.

(c) Filing of instruments pertaining to mining claims under other Federal law with the BLM or other Federal agency shall not excuse the filings required by this subpart and filings under this subpart shall not excuse the filing of instruments pertaining to mining claims under any other Federal law, except that filing a notice or certificate of location or an affidavit of annual assessment work under this subpart which is marked by the owner as also being filed under the Act of April 8, 1948 (62 Stat. 162) or the Act of August 11, 1955 (30 U.S.C. 621–625), will satisfy the recording requirement for O & C lands under 43 CFR subpart 3821 and Pub. L. 359 lands under 43 CFR part 3730, or as provided in § 3833.2 of this title.

(d) In the case of any action or contest initiated by the United States affecting an unpatented mining claim, mill, or tunnel site, only those owners who have recorded their claim or site pursuant to § 3833.1–2 and filed a notice of transfer of interest pursuant to § 3833.3 shall be considered by the United States as parties whose rights are affected by such action or contest and shall be personally notified and served by certified mail sent to their last address of record. As provided in subpart 1810 of this title, all owners of record with the Bureau of Land Management shall be personally notified and served by certified mail, return receipt requested, sent to their last address of record. Such owners shall be deemed to have been served if the certified mail was delivered to that address of record, regardless of whether the certified mail was in fact received by them. The provisions of this subpart shall not be applicable to procedures for public notice required under part 3860 of this title with respect to mineral patent applications.

(e) Actual notice of an unpatented mining claim or mill or tunnel site by any employee or officer of the United States shall not exempt the claim or site from the requirements of this subpart.

(f) Failure of the government to notify an owner upon his filing or recording of a claim or site under this subpart that such claim or site is located on lands not subject to location or otherwise void for failure to comply with Federal or State law or regulations shall not prevent the government from later challenging the validity of or declaring void such claim or site in accordance with due process of law.

(g) Any person who files an instrument required by these regulations knowing the same to contain any false, fictitious or fraudulent statement or entry, may be subject to criminal penalties under 18 U.S.C. 1001.

(h) Any party adversely affected by a decision of the authorized officer made pursuant to the provisions of this subpart shall have a right of appeal pursuant to part 4 of this title.

[42 FR 5300, Jan. 27, 1977, as amended at 44 FR 9723, Feb. 14, 1979; 47 FR 56307, Dec. 15, 1982; 53 FR 48882, Dec. 2, 1988; 55 FR 17754, Apr. 27, 1990; 58 FR 38201, July 15, 1993]

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

November 3, 1998

In Reply Refer To:
3833 (WO 320) P

EMS TRANSMISSION 11/4/98
Instruction Memorandum No. 99-017
Expires: 09/30/00

To: State Directors

From: Assistant Director, Minerals, Realty and Resource Protection

Subject: Re-authorization of Maintenance Fees, Location Fees, and Small Miner Waivers

Program Area: Mining Claim Recordation, Maintenance Fee, Waiver Certification and Adjudication.

Background: The President signed Public Law 105-277 (H. R. 4328) on October 21, 1998. This Act established appropriations for all remaining Federal agencies prior to the 105th Congress adjourning sine die. Section (e) of the Act contains the Interior and Related Agencies Appropriations Act for Fiscal Year 1999. In the BLM Administration section, the maintenance fee and related portions were re-authorized until September 30, 2001 with certain modifications from the existing act. These changes are made to existing 30 U.S.C. 28 - 28[k], which is transmitted with the statutory amendments incorporated for your use (Attachment I).

Contrary to the language of the several Continuing Resolutions, Public Law 105 - 277 requires a location and maintenance fee at the time of recording, for any mining claim, mill or tunnel site located. (30 U.S.C. 28f[a] and [b]). This is retro-active in nature. Any mining claim or site located between September 30, 1998 and October 21, 1998 and recorded with BLM, must pay $135 to BLM ($25 location fee, $100 maintenance fee, and $10 service charge). Claims recorded without proper fees under the terms of the Continuing Resolutions must pay the fees owed or the recordation is void and forfeit.

The text of 30 USC 28f[d] has been modified by the addition of (d)(3) which allows a party filing a waiver, which is later deemed defective by decision of BLM, a 60-day (instead of the usual 30-day period) to correct the defect. It additionally provides that if the defect cannot be cured, the party filing the waiver may instead pay the $100 maintenance fee per claim or site and avoid forfeiture from the defective waiver.

LR-8a FY-99 Continuing Resolution

(Amended 43 CFR 3833 Regulations, Public Law 105-277)
(Annual assessment due by Sept 1 through 2001, other changes)

Policy: Any claims and sites located between September 30 and October 21, 1998 and recorded with BLM in this time period with insufficient fees are to be sent a letter of deficiency and be required to pay the full $135 per recordation. The authority is PL 105-277 as given above and/or your can include the relevant statutory language from Attachment I. Give the affected party the usual 30 days to complete payment of required fees.

The new 60-day provision for curing defective waivers takes effect October 1, 1998 as to any waiver filed on or after that date through September 30, 2001. Please note that the 60-day period only applies to waivers and not to other decisions issued in the mining claim recordation program, which are still subject the usual 30-day provisions of 43 CFR Part 4.

Timeframes: This policy is effective immediately.

Budget Implications: None.

Coordination: Usual Channels

Contact: Roger Haskins, Solids Group (WO 320) at (202) 452-0355

Signed by:
Robert M. Anderson
Acting Assistant Director
Minerals, Realty and Resource Protection

Authenticated by:
Robert M. Williams
Directives, Records
& Internet Group,WO540

1 Attachment
  1 - Title 30 U.S.C. 28 (1998) (5 pp)

Title 30 USC 28 (1998)

Section 28. Mining district regulations by miners: location, recordation, and amount of work; marking of location on ground; records; annual labor or improvements on claims pending issue of patent; co-owner's succession in interest upon delinquency in contributing proportion of expenditures; tunnel as lode expenditure.

The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining claims made after May 10, 1872, shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the 10th day of May 1872, that is granted a waiver under section 28f of this title, and until a patent has been issued therefor, not less than $100 worth of labor shall be performed or improvements made during each year. On all claims located prior to the 10th day of May 1872, $10 worth of labor shall be performed or improvements made each year, for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditures may be made upon any one claim; and upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several coowners to contribute his proportion of the expenditures required hereby, the coowners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim, for at least once a week for 90 days, and if at the expiration of 90 days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section, his interest in the claim shall become the property of his co-owners who have made the required expenditures. The period within which the work required to be done annually on all unpatented mineral claims located since May 10, 1872, including such claims in the Territory of Alaska, shall commence at 12 o'clock meridian on the 1st day of September succeeding the date of location of such claim.

Where a person or company has or may run a tunnel for the purposes of developing a lode or lodes, owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, whether located prior to or since May 10, 1872; and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same as required by this section. On all such valid claims the annual period ending December 31, 1921, shall continue to 12 o'clock meridian July 1, 1922.

Section 28a. Omitted

Section 28b. Annual assessment work on mining claims; temporary deferment; conditions

The performance of not less than $100 worth of labor or the making of improvements aggregating such amount, which labor or improvements are required under the provisions of section 28 of this title to be made during each year, may be deferred by the Secretary of the Interior as to any mining claim or group of claims in the United States upon the submission by the claimant of evidence satisfactory to the Secretary that such mining claim or group of claims is surrounded by lands over which a right-of-way for the performance of such assessment work has been denied or is in litigation or is in the process of acquisition under State law or that other legal impediments exist which affect the right of the claimant to enter upon the surface of such claim or group of claims or to gain access to the boundaries thereof.

Section 28c. Length and termination of deferment

The period for which said deferment may be granted shall end when the conditions justifying deferment have been removed: Provided that the initial period shall not exceed 1 year but may be renewed for a further period of 1 year if justifiable conditions exist: Provided further, that the relief available under sections 28b to 28e of this title is in addition to any relief available under any other Act of Congress with respect to mining claims.

Section 28d. Performance of deferred work

All deferred assessment work shall be performed not later than the end of the assessment year next subsequent to the removal or cessation of the causes for deferment or the expiration of any deferments granted under sections 28b to 28e of this title and shall be in addition to the annual assessment work required by law in such year.

Section 28e. Recordation of deferment

Claimant shall file or record or cause to be filed or recorded in the office where the notice or certificate of location of such claim or group of claims is filed or recorded, a notice to the public of claimant's petition to the Secretary of the Interior for deferment under sections 28b to 28e of this title, and of the order or decision disposing of such petition.

Sec 28f. Hardrock mining claim maintenance fee

(a) Claim maintenance fee

The holder of each unpatented mining claim, mill or tunnel site located pursuant to the Mining Laws of the United States, whether located before or after the enactment of this Act, shall pay to the Secretary of the Interior, on or before September 1 of each year for years 1999 through 2001, a claim maintenance fee of $100 per claim or site. Such claim maintenance fee shall be in lieu of the assessment work requirement contained in the Mining Law of 1872 (30 U.S.C. 28-28e) and the related filing requirements contained in Section 1744(a) and (c) of title 43.

(b) Time of payment

The claim maintenance fee payable pursuant to subsection (a) of this section for any assessment year shall be paid before the commencement of the assessment year, except that for the initial assessment year in which the location is made, the locator shall pay the claim maintenance fee at the time the location notice is recorded with the Bureau of Land Management. The location fee imposed under section 28g of this title shall be payable not later than 90 days after the date of location.

(c) Oil shale claims subject to claim maintenance fees under Energy Policy Act of 1992

This section shall not apply to any oil shale claims for which a fee is required to be paid under section 2511(e)(2) of the Energy Policy Act of 1992 (Public Law 102-486; 106 Stat. 3111; 30 U.S.C. 242).

(d) Waiver

(1) The claim maintenance fee required under this section may be waived for a claimant who certifies in writing to the Secretary that on the date the payment was due, the claimant and all related parties:

(A) Held not more than 10 mining claims, mill sites, or tunnel sites, or any combination thereof, on public lands; and

(B) Have performed assessment work required under the Mining Law of 1872 (30 U.S.C. 28-28e) to maintain the mining claims held by the claimant and such related parties for the assessment year ending on noon of September 1 of the calendar year in which payment of the claim maintenance fee was due.

(2) For purposes of paragraph (1) with respect to any claimant, the term "related party" means:

(A) The spouse and dependent children (as defined in section 152 of title 26) of the claimant; and

(B) A person who controls, is controlled by, or is under common control with the claimant.

For purposes of this section, the term control includes actual control, legal control, and the power to exercise control, through or by common directors, officers, stockholders, a voting trust, or a holding company or investment company, or any other means.

(3) If a small miner waiver application is determined to be defective for any reason, the claimant shall have a period of 60 days after receipt of written notification of the defect or defects by the Bureau of Land Management to:

(A) Cure such defects, or

(B) Pay the $100 claim maintenance fee due for such period.

Section 28g. Hardrock mining claim location fee

Notwithstanding any other provision of law, for every unpatented mining claim, mill or tunnel site located after August 10, 1993, and before September 30, 2001, pursuant to the Mining Laws of the United States, the locator shall, at the time the location notice is recorded with the Bureau of Land Management, pay to the Secretary of the Interior a location fee, in addition to the claim maintenance fee required by section 28f of this title, of $25.00 per claim.

Section 28h. Co-ownership

The co-ownership provisions of the Mining Law of 1872 (30 U.S.C. 28) shall remain in effect, except that in applying such provisions, the annual claim maintenance fee required under this Act shall, where applicable, replace applicable assessment requirements and expenditures.

Section 28i. Failure to pay

Failure to pay the claim maintenance fee or the location fee as required by sections 28f to 28k of this title shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law.

Section 28j. Other requirements

(a) Federal Land Policy and Management Act requirements

Nothing in sections 28f to 28k of this title shall change or modify the requirements of Section 314(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(b)), or the requirements of Section 314(c) of the Federal Land Policy and Management Act of 1976
(43 U.S.C. 1744(c)) related to filings required by section 314(b), and such requirements shall remain in effect with respect to claims, and mill or tunnel sites for which fees are required to be paid under this section.

(b) Omitted

(c) Fee adjustments

(1) The Secretary of the Interior shall adjust the fees required by sections 28f to 28k of this title to reflect changes in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor every 5 years after August 10, 1993, or more frequently if the Secretary determines an adjustment to be reasonable.

(2) The Secretary shall provide claimants notice of any adjustment made under this subsection not later than July 1 of any year in which the adjustment is made.

(3) A fee adjustment under this subsection shall begin to apply the first assessment year which begins after adjustment is made.

Section 28k. Regulations

The Secretary of the Interior shall promulgate rules and regulations to carry out the terms and conditions of sections 28f to 28k of this title as soon as practicable after August 10, 1993.

LR-9 Nature and Classes of Mining Claims

(43 CFR 3840 - 3844)

PART 3840—NATURE AND CLASSES OF MINING CLAIMS

Subpart 3840—Types of Claims

Sec.

3840.1 Classes of mining claims.

Subpart 3841—Lode Claims

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3842.1 Placer claims: General.
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Subpart 3843—Tunnel Sites

3843.1 Possessory right of tunnel proprietor.
3843.2 Location of tunnel claims.
3843.3 Recording of notices.

Subpart 3844—Millsites

3844.0–3 Authority.
3844.1 Required use.

Subpart 3840—Types of Claims

§ 3840.1 Classes of mining claims.

Mining claims are of two distinct classes: lode claims and placers.

[35 FR 9750, June 13, 1970]

Subpart 3841—Lode Claims

SOURCE: 35 FR 9750, June 13, 1970, unless otherwise noted.

§ 3841.1 Lodes located previous to May 10, 1872.

The status of lode claims located or patented previous to May 10, 1872, is not changed with regard to their extent along the lode or width of surface; but the claim is enlarged by 2322 and 2328, R.S. (30 U.S.C. 26, 33), by investing the locator, his heirs or assigns, with the right to follow, upon the conditions stated therein, all veins, lodes, or ledges, the top or apex of which lies inside of the surface lines of his claim.

§ 3841.2 Lodes must not have been adversely claimed.

It is to be distinctly understood that the law limits the possessory right to veins, lodes, or ledges, other than the one named in the original location, to such as were not adversely claimed on May 10, 1872, and that where such other vein or ledge was so adversely claimed at that date the right of the party so adversely claiming is in no way impaired by the act of that date.

§ 3841.3 Discovery.

§ 3841.3–1 Discovery required before location.

No lode claim shall be located until after the discovery of a vein or lode within the limits of the claim, the object of which provision is evidently to prevent the appropriation of presumed mineral ground for speculative purposes, to the exclusion of bona fide prospectors, before sufficient work has been done to determine whether a vein or lode really exists.

§ 3841.3–2 Discovery work.

The claimant should, therefore, prior to locating his claim, unless the vein can be traced upon the surface, sink a shaft or run a tunnel or drift to a sufficient depth therein to discover and develop a mineral-bearing vein, lode, or crevice; should determine, if possible, the general course of such vein in either direction from the point of discovery, by which direction he will be governed in marking the boundaries of his claim on the surface.

§ 3841.4 Describing locations.

§ 3841.4–1 Length of lode claims.

From and after May 10, 1872, any person who is a citizen of the United States, or who has declared his intention to become a citizen, may locate, record, and hold a mining claim of 1,500 linear feet along the course of any mineral vein or lode subject to location; or an association of persons, severally qualified as above, may make joint location of such claim of 1,500 feet, but in no event can a location of a vein or lode made after May 10, 1872, exceed 1,500 feet along the course thereof, whatever may be the number of persons composing the association.

§ 3841.4–2 Width of lode claims.

No lode located after May 10, 1872, can exceed a parallelogram 1,500 feet in length by 600 feet in width, but whether surface ground of that width can be taken depends upon the local regulations or State or Territorial laws in force in the several mining districts. No such local regulations or State or Territorial laws shall limit a vein or lode claim to less than 1,500 feet along the course thereof, whether the location is made by one or more persons, nor can surface rights be limited to less than 50 feet in width unless adverse claims existing on May 10, 1872, render such lateral limitation necessary.

§ 3841.4–3 Extent of surface ground.

With regard to the extent of surface ground adjoining a vein or lode, and claimed for the convenient working thereof, the Act of May 10, 1872, provides that the lateral extent of locations of veins or lodes made after said date shall in no case exceed 300 feet on each side of the middle of the vein at the surface, and that no such surface rights shall be limited by any mining regulations to less than 25 feet on each side of the middle of the vein at the surface, except where adverse rights existing on May 10, 1872, may render such limitation necessary; the end lines of such claims to be in all cases parallel to each other. Said lateral measurements cannot extend beyond 300 feet on either side of the middle of the vein at the surface, or such distance as is allowed by local laws. For example: 400 feet cannot be taken on one side and 200 feet on the other. If, however, 300 feet on each side are allowed, and by reason of prior claims but 100 feet can be taken on one side, the locator will not be restricted to less than 300 feet on the other side; and when the locator does not determine by exploration where the middle of the vein at the surface is, his discovery shaft must be assumed to mark such point.

§ 3841.4–4 Defining of locations.

Section 5 of the Act of May 10, 1872, now section 2324, Revised Statutes (30 U.S.C. 28), requires that "the location must be distinctly marked on the ground so that its boundaries can be readily traced." Locators can not exercise too much care in defining their locations at the outset, inasmuch as section 5 of the Act of May 10, 1872 (17 Stat. 92; 30 U.S.C. 28) requires that all records of mining locations made subsequent to the date of said Act shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located, by reference to some natural object or permanent monument, as will identify the claim.

§ 3841.4–5 Location notice; monumenting.

(a) The location notice should give the course and distance as nearly as practicable from the discovery shaft on the claim to some permanent, wellknown points or objects, such, for instance, as stone monuments, blazed trees, the confluence of streams, point of intersection of well-known gulches, ravines, or roads, prominent buttes, hills, etc., which may be in the immediate vicinity, and which will serve to perpetuate and fix the locus of the claim and render it susceptible of identification from the description thereof given in the record of locations in the district, and should be duly recorded.

(b) In addition to the foregoing data, the claimant should state the names of adjoining claims, or, if none adjoin, the relative positions of the nearest claims; should drive a post or erect a monument of stones at each corner of his surface ground, and at the point of discovery or discovery shaft should fix a post, stake, or board, upon which should be designated the name of the lode, the name or names of the locators, the number of feet claimed, and in which direction from the point of discovery, it being essential that the location notice filed for record, in addition to the foregoing description, should state whether the entire claim of 1,500 feet is taken on one side of the point of discovery, or whether it is partly upon one and partly upon the other side thereof, and in the latter case, how many feet are claimed upon each side of such discovery point. As to the importance of monuments, and as to their paramount authority, see the Act of April 28, 1904 (33 Stat. 545; 30 U.S.C. 34), which amended R.S. 2327.

§3841.4–6 Recording of location notice.

The location notice must be filed for record in all respects as required by the State or territorial laws, and local rules and regulations, if there by any.

Subpart 3842—Placer Claims

SOURCE: 35 FR 9751, June 13, 1970, unless otherwise noted.

§3842.1 Placer claims: General.

§3842.1–1 Discovery.

But one discovery of mineral is required to support a placer location, whether it be of 20 acres by an individual, or of 160 acres or less by an association of persons.

§3842.1–2 Maximum allowable acreage.

(a) By R.S. 2330 (30 U.S.C. 36), it is declared that no location of a placer claim made after July 9, 1870, shall exceed 160 acres for any one person or association of persons, which location shall conform to the United States surveys.

(b) R.S. 2331 (30 U.S.C. 35) provides that all placer-mining claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys, and such locations shall not include more than 20 acres for each individual claimant.

(c) The foregoing provisions of law are construed to mean that after July 9, 1870, no location of a placer claim can be made to exceed 160 acres, whatever may be the number of locators associated together, or whatever the local regulations of the district may allow; and that from and after May 10, 1872, no location can exceed 20 acres for each individual participating therein; that it, a location by two persons can not exceed 40 acres, and one by three persons can not exceed 60 acres.

§3842.1–3 Locations authorized in 10-acre units.

By R.S. 2330 (30 U.S.C. 36), authority is given for subdividing 40-acre legal subdivisions into 10-acre tracts. These 10-acre tracts should be considered and dealt with as legal subdivisions, and an applicant having a placer claim which conforms to one or more of such 10-acre tracts, contiguous in case of two or more tracts, may make entry thereof, after the usual proceedings, without further survey or plat.

§3842.1–4 Manner of describing 10-acre units.

A 10-acre subdivision may be described, for instance if situated in the extreme northeast of the section, as the "NE. ¼ of the NE. ¼ of the NE. ¼" of the section, or, in like manner, by appropriate terms, wherever situated; but in addition to this description, the notice must give all the other data required in a mineral application, by which parties may be put on inquiry as to the land sought to be patented. The proofs submitted with applications must show clearly the character and extent of the improvements upon the premises.

§3842.1–5 Conformity of placer claims to the public land surveys.

(a) All placer-mining claims located after May 10, 1872, shall conform as near as practicable with the United States system of public-land surveys and the rectangular subdivisions of such surveys, whether the locations are upon surveyed or unsurveyed lands.

(b) Conformity to the public-land surveys and the rectangular subdivisions thereof will not be required where compliance with such requirement would necessitate the placing of the lines thereof upon other prior located claims or where the claim is surrounded by prior locations.

(c) Where a placer location by one or two persons can be entirely included within a square 40-acre tract, by three or four persons within two square 40-acre tracts placed end to end, by five or six persons within three square 40-acre tracts, and by seven or eight persons within four square 40-acre tracts, such locations will be regarded as within the requirements where strict conformity is impracticable.

(d) Whether a placer location conforms reasonably with the legal subdivisions of the public survey is a question of fact to be determined in each case, and no location will be passed to patent without satisfactory evidence in this regard. Claimants should bear in mind that it is the policy of the Government to have all entries whether of agricultural or mineral lands as compact and regular in form as reasonably practicable, and that it will not permit or sanction entries or locations which cut the public domain into long narrow strips or grossly irregular or fantastically shaped tracts. (Snow Flake Fraction Placer, 37 L.D. 250.)

§3842.2 Building-stone placers.

The Act of August 4, 1892 (27 Stat. 348; 30 U.S.C. 161), extends the mineral land laws so as to bring lands chiefly valuable for building stone within the provisions of said laws.

(a) Common varieties of building stone are, since the Act of July 23, 1955 (69 Stat. 367; 30 U.S.C. 611) no longer locatable under the mining laws.

(b) Uncommon varieties of building stone continue to be subject to the building stone placer supplement to the mining law; 30 U.S.C. 161.

§3842.3 Saline placers.

(a) Under the Act approved January 31, 1901 (31 Stat. 745; 30 U.S.C. 162), extending the mining laws to saline lands, the provisions of the law relating to placer-mining claims are extended to all States so as to permit the location and purchase thereunder of all unoccupied public lands containing salt springs, or deposits of salt in any form, and chiefly valuable therefor, with the proviso, "That the same person shall not locate or enter more than one claim hereunder." The saline placer act was superseded by the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181 *et seq.*), whereby saline (sodium) deposits were made subject to disposal by leases instead of mining locations.

(b) Rights obtained by location under the placer-mining laws are assignable, and the assignee may make the entry in his own name; so, under this act a person holding as assignee may make entry in his own name: *Provided*, That he has not held under this act, at any time, either as locator or entryman, any other lands; his right is exhausted by having held under this act any particular tract, either as locator or entryman, either as an individual or as a member of an association. It follows, therefore, that no application for patent or entry, made under this act, shall embrace more than one single location.

(c) In order that the conditions imposed by the proviso, as set forth in paragraph (b) of this section, may duly appear, the application for patent must contain or be accompanied by a specific statement by each person whose name appears therein that he never has, either as an individual or as a member of an association, located or entered any other lands under the provisions of this act. The application for patent should also be accompanied by a showing, fully disclosing the qualifications as defined by the proviso, of the applicants' predecessors in interest.

§3842.4 Petroleum placers.

The Act of February 11, 1897 (29 Stat. 526), provides for the location and entry of public lands chiefly valuable for petroleum or other mineral oils, and entries of that nature made prior to the passage of said act are to be considered as though made thereunder. This Act was superseded by the Mineral Leasing Act of February 25, 1920 (41 Stat. 437).

Subpart 3843—Tunnel Sites

SOURCE: 35 FR 9752, June 13, 1970, unless otherwise noted.

§ 3843.1 Possessory right of tunnel proprietor.

The effect of R.S. 2323 (30 U.S.C. 27), is to give the proprietors of a mining tunnel run in good faith the possessory right to 1,500 feet of any blind lodes cut, discovered, or intersected by such tunnel, which were not previously known to exist within 3,000 feet from the face or point of commencement of such tunnel, and to prohibit other parties, after the commencement of the tunnel, from prospecting for and making locations of lodes on the line thereof and within said distance of 3,000 feet, unless such lodes appear upon the surface or were previously known to exist. The term "face," as used in said sections, is contrued and held to mean the first working face formed in the tunnel, and to signify the point at which the tunnel actually enters cover; it being from this point that the 3,000 feet are to be counted upon which prospecting is prohibited as aforesaid. R.S. 2323 provides: "Failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel."

§ 3843.2 Location of tunnel claims.

To avail themselves of the benefits of this provision of law, the proprietors of a mining tunnel will be required, at the time they enter cover as aforesaid, to give proper notice of their tunnel location by erecting a substantial post, board, or monument at the face or point of commencement thereof, upon which should be posted a good and sufficient notice, giving the names of the parties or company claiming the tunnel right; the actual or proposed course or direction of the tunnel, the height and width thereof, and the course and distance from such face or point of commencement to some permanent well-known objects in the vicinity by which to fix and determine the locus in manner heretofore set forth applicable to locations of veins or lodes, and at the time of posting such notice they shall, in order that miners or prospectors may be enabled to determine whether or not they are within the lines of the tunnel, establish the boundary lines thereof, by stakes or monuments placed along such lines at proper intervals, to the terminus of the 3,000 feet from the face or point of commencement of the tunnel, and the lines so marked will define and govern as to specific boundaries within which prospecting for lodes not previously known to exist is prohibited while work on the tunnel is being prosecuted with reasonable diligence.

§ 3843.3 Recording of notices.

A full and correct copy of such notice of location defining the tunnel claim must be filed for record with the mining recorder of the district, to which notice must be attached the sworn statement or declaration of the owners, claimants, or projectors of such tunnel, setting forth the facts in the case; stating the amount expended by themselves and their predecessors in interest in prosecuting work thereon; the extent of the work performed, and that it is bona fide their intention to prosecute work on the tunnel so located and described with reasonable diligence for the development of a vein or lode, or for the discovery of mines, or both, as the case may be. This notice of location must be duly recorded, and, with the said sworn statement attached, kept on the recorder's files for future reference.

Subpart 3844—Millsites

§ 3844.0-3 Authority.

The location and patenting of lands for millsite purposes is authorized by R.S. 2337 as amended by the Act of March 18, 1960. The Act, 30 U.S.C. 42, reads as follows:

> Patents for nonmineral lands.
>
> (a) Where nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced, and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location made of such nonadjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by sections 21–24, 26–28, 29, 30, 33–48, 50–52, and 71–76 of this title for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill site, as provided in this section.
>
> (b) Where nonmineral land is needed by the proprietor of a placer claim for mining, milling, processing, beneficiation, or other operations in connection with such claim, and is used or occupied by the proprietor for such purposes, such land may be included in an application for a patent for such claim, and may be patented therewith subject to the same requirements as to survey and notice as are applicable to placers. No location made of such nonmineral land shall exceed five acres and payment for the same shall be made at the rate applicable to placer claims which do not include a vein or lode. (As amended Mar. 13, 1960, Pub. Law 86-390, 74 Stat. 7.)

[35 FR 9752, June 13, 1970]

§ 3844.1 Required use.

A millsite is required to be used or occupied distinctly and explicitly for mining or milling purposes in connection with the lode or placer claim with which it is associated. A custom or independent millsite may be located for the erection and maintenance of a quartz mill or reduction works.

[35 FR 9752, June 13, 1970]

LR-10 Assessment Work

(43 CFR 3850 - 3852)

PART 3850—ASSESSMENT WORK

Sec.

3850.0-1 Purpose.
3850.0-9 Information collection.

Subpart 3851—Assessment Work: General

3851.1 Assessment work requirements.
3851.2 Inclusion of surveys in assessment work.
3851.3 Effect of failure to perform assessment work.
3851.4 Failure of a co-owner to contribute to annual assessment work; or to the payment of maintenance fees.
3851.5 Assessment work not required after allowance of mineral entry.
3851.6 Assessment work not required for active duty military personnel.

Subpart 3852—Deferment of Assessment Work

3852.0-3 Authority.
3852.1 Conditions under which deferment may be granted.
3852.2 Filing of petition for deferment, contents.
3852.3 Notice of action on petition to be recorded.
3852.4 Period for which deferment may be granted.
3852.5 When deferred assessment work is to be done.

AUTHORITY: 30 U.S.C. 22 *et seq.*; 30 U.S.C. 28–28k; 50 U.S.C. Appendix 565; 107 Stat. 405.

§ 3850.0-1 Purpose.

The purpose of this part is to recite the requirements of the General Mining Law of 1872, as amended, for the performance of assessment work; to identify the methods provided by statute for qualifying assessment work; to provide for the deferment or suspension of assessment work under certain conditions; and to advise the claimant of the consequences of failing to perform the work.

[58 FR 38202, July 15, 1993]

§ 3850.0-9 Information collection.

(a) The collections of information contained in part 3850 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0104 and subsequently consolidated with 1004–0114. The information will be used to allow the BLM to process petitions for the deferment of assessment work, determine if the assessment work required by statute (30 U.S.C. 28–28(e)) was indeed performed, and to determine the ownership of a mining claim or site in cases of delinquency of co-owners under 30 U.S.C. 28. A response is required to obtain a benefit in accordance with Section 2324 of the Revised Statutes, as amended (30 U.S.C. 28–28(e)) and 43 CFR part 3850.

(b) Public reporting burden for this information is estimated to average 8 minutes per response, including time for reviewing instructions, searching existing records, gathering and maintaining the data collected, and completing and reviewing the information collected. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden; to the Information Collection Clearance Officer (783), Bureau of Land Management, 1849 C St., NW., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project, 1004–0114, Washington, DC 20503.

[58 FR 38202, July 15, 1993]

Subpart 3851—Assessment Work: General

SOURCE: 35 FR 9753, June 13, 1970, unless otherwise noted.

§ 3851.1 Assessment work requirements.

(a) The assessment year begins at 12 o'clock noon on September 1st and ends at 12 o'clock noon on the following September 1st.

(b) All lode and placer mining claimants shall have performed, or caused to have been performed, not less than $100 of labor or improvements upon each lode or placer claim held by the claimant for each assessment year following the assessment year of the lode or placer claim's location.

(c) Where a group of lode or placer claims are held in common, and cover the same mineral deposit, the assessment work may be performed on one or several claims of the group, as long as the aggregate expenditure totals not less than $100 per claim, and the work performed or improvements made will benefit the development of the claim block as a whole.

[58 FR 38202, July 15, 1993]

§ 3851.2 Inclusion of surveys in assessment work.

(a) In addition to the several types of work that may fulfill the annual labor requirement, the requirement can also be satisfied by conducting geological, geochemical, and geophysical surveys. Pub. L. 85–876, Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28–1–2). Such surveys must be conducted by qualified experts and verified by a detailed report filed in the county or recording district office in which the claim is located. This report must set forth fully the following:

(1) The location of the work performed in relation to the point of discovery and boundaries of the claim.

(2) Nature, extent and cost of the work performed.

(3) The basic findings of the surveys.

(4) The name, address and professional background of the person or persons conducting the work.

Such surveys may not be applied as labor for more than two consecutive years or for more than a total of five years on any one mining claim. Each survey shall be nonrepetitive of any previous survey of the same claim. Such surveys will not apply toward the statutory provision requiring the expenditure of $500 for each claim for mineral patent.

(b) As used in this section—

(1) The term *geological surveys* means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits;

(2) The term *geochemical surveys* means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of chemistry as they relate to the search for and discovery of mineral deposits;

(3) The term *geophysical surveys* means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods for measuring physical difference between rock types or discontinuities in geological formations;

(4) The term *qualified expert* means an individual qualified by education or experience to conduct geological, geochemical, or geophysical surveys, as the case may be.

§ 3851.3 Effect of failure to perform assessment work.

(a) Failure of a mining claimant to comply substantially with the requirement of an annual expenditure of $100 in labor or improvements on a claim imposed by section 2324 of the Revised Statutes (30 U.S.C. 28) will render the claim subject to cancellation.

(b) Except as provided in § 3851.5 and subpart 3852, failure to perform the assessment work required under § 3851.1 causes the interest of the claimant(s) in the minerals subject to the mining laws to revert back to the public domain.

(c) The Act of August 10, 1993, with certain exceptions for small miners, temporarily suspends and supersedes the requirement to perform assessment work under § 3851.1, and requires the payment of an annual $100 maintenance fee per mining claim in lieu of the assessment work. For oil shale claims, the Energy Policy Act of 1992 (30 U.S.C. 242) suspends and supersedes the requirement to perform assessment work under § 3851.1, and requires the payment of an annual $550 rental fee per oil shale mining claim in lieu of the assessment work. The maintenance fee requirements and waivers from the maintenance fee are described in §§ 3833.0–3(f), 3833.1–5, 3833.1–6, and 3833.1–7 of this title.

[37 FR 17836, Sept. 1, 1972, as amended at 58 FR 38202, July 15, 1993; 59 FR 44863, Aug. 30, 1994]

§ 3851.4 Failure of a co-owner to contribute to annual assessment work; or to the payment of maintenance fees.

(a) Upon the failure of any co-owner of a mining claim or mill or tunnel site to contribute the proper proportion of the required expenditures, the co-owners who have performed the labor, made improvements, paid the maintenance fee required under §§ 3833.1–5 and 3833.1–6 of this title, may, at the expiration of the assessment year, give such delinquent co-owner personal notice of this failure in writing. Alternatively, this notice may be given by publication in the newspaper published nearest the claim for at least once a week for 90 days. If, upon the expiration of 90 days, after such notice in writing, or upon the expiration of 180 days after the first newspaper publication of notice, the delinquent co-owner shall have failed to contribute the proportionate share of such expenditures or improvements, such interest in the claim by law passes to the co-owners who have made the expenditures or improvements.

(b) A claimant alleging ownership of a forfeited interest under paragraph (a) of this section who requests the authorized officer to change the ownership records of the affected mining claims or sites shall present the following:

(1) Statement of the publisher of the newspaper as to the facts of publication, giving the beginning and ending dates of publication, a printed copy of the notice published, and a statement by the claimant that the delinquent co-owner failed to contribute the proper proportion within the period fixed by the statute, or

(2) Evidence of personal notice of delinquency upon the delinquent party. If notice is effected by mail, the minimum sufficient evidence shall consist of a copy of the notice and a copy of the return receipt of the U.S. Postal Service evidencing receipt by the delinquent party of a registered or certified envelope containing the notice. If notice was made in person, an affidavit signed and dated on the date of notice will suffice as evidence of such notice; and

(3) In all cases, a signed and dated statement by the claimant that the delinquent co-owner failed to contribute the proper proportion within the period fixed by the statute.

(c) Upon determination by the authorized officer that paragraphs (a) and (b) of this section have been complied with, the BLM records of the mining claim shall be changed pursuant to § 3833.3 of this title. Such a change in ownership requires that the claimant submit the service charge required for a transfer of interest pursuant to § 3833.1–4 of this title.

(d) Active duty military personnel who give notice and comply with § 3851.6 are not subject to the provisions of this section.

[59 FR 44863, Aug. 30, 1994]

§ 3851.5 Assessment work not required after allowance of mineral entry.

Performance of annual assessment work and payment of maintenance fees is not required after the date that the mineral entry has been allowed.

(a) The assessment year in which the mineral entry is allowed is the first assessment year for which the assessment work and payment of maintenance fees is no longer required, and assessment work is not required in any assessment year thereafter until a mineral patent issues.

(b) If a mineral entry is canceled in whole or in part, the mining claims and mill sites that are no longer covered by the mineral entry shall be subject to the assessment work requirement, or the payment of maintenance fees, beginning in the next assessment year following the assessment year that the mineral entry was canceled.

[59 FR 44863, Aug. 30, 1994]

§ 3851.6 Assessment work not required for active duty military personnel.

Pursuant to the Soldiers' and Sailors' Relief Act (50 U.S.C. Appendix 565), a person entering active military service is exempt from the performance of annual assessment work under this subpart for each assessment year in which the service person is on active duty.

(a) To claim the exemption, the person entering active military service shall file, or cause to be filed with the proper BLM office, a notice of his or her entry into active military service. The notice shall be filed in the assessment year that the person entered active duty status.

(b) The filing of the notice exempts the person from performing assessment work or paying the maintenance fees until 6 months have passed from the person's release from active duty status, or until 6 months have passed from release from a military hospital, whichever is later.

(c) The performance of assessment work or the payment of maintenance fees shall resume in the assessment year beginning at least 6 months after the date the person was released from active duty or a military hospital, whichever is later.

(d) The notice shall be filed as a certified statement pursuant to section 3833.1–7 of this title, and shall list all mining claims and sites affected by claim name and BLM serial number.

[59 FR 44863, Aug. 30, 1994]

Subpart 3852—Deferment of Assessment Work

SOURCE: 35 FR 9753, June 13, 1970, unless otherwise noted.

§ 3852.0–3 Authority.

The Act of June 21, 1949 (63 Stat. 214; 30 U.S.C. 28b–c), provides for the temporary deferment in certain unavoidable contingencies of the performance of annual assessment work on mining claims held by location in the United States. The relief under this act is in addition to any other relief available under any other act of Congress with respect to the suspension of annual assessment work on mining claims.

§ 3852.1 Conditions under which deferment may be granted.

The deferment may be granted where any mining claim or group of claims in the United States is surrounded by lands over which a right-of-way for the performance of assessment work has been denied or is in litigation or is in the process of acquisition under State law or where other legal impediments exist which affect the right of the claimant to enter upon the surface of such claim or group of claims or to gain access to the boundaries thereof.

§ 3852.2 Filing of petition for deferment, contents.

(a) In order to obtain a deferment, the claimant shall file with the proper BLM office a petition in duplicate requesting such a deferment. No particular form of petition is required, but the applicant shall attach to one copy thereof a copy of the notice to the public required by 30 U.S.C. 28e showing that it has been filed or recorded in the local recording office in which the notices or certificates of location were filed or recorded. The petition and duplicate should be signed by at least one of the owners of each of the locations involved, shall give the names of the claims, dates of location, and the date of the beginning of the one-year period for which deferment is requested. Each petition shall be accompanied by a $25 nonrefundable service charge.

(b) If the petition is based upon the denial of a right-of-way, it must state the nature and ownership of the land or claim thereto over which it is necessary to obtain a right-of-way in order to reach the surrounded claims, and the land description thereof by legal subdivisions if the land is surveyed, and give full details as to why present use of the right-of-way is denied or prevented and as to the steps which have been taken to acquire the right to use it. The petition should state whether any other right-of-way is available and if so, give reasons why it is not feasible or desirable to use that right-of-way.

(c) If the petition is based on other legal impediments, they must be set out and their effect described in detail.

[35 FR 9753, June 13, 1970, as amended at 53 FR 48882, Dec. 2, 1988; 59 FR 44863, Aug. 30, 1994]

§ 3852.3 Notice of action on petition to be recorded.

The claimant shall file or record, in the local recording office in which the notice of petition for deferment was filed or recorded, a copy of the order or decision of the BLM authorized officer disposing of the petition.

[59 FR 44864, Aug. 30, 1994]

§ 3852.4 Period for which deferment may be granted.

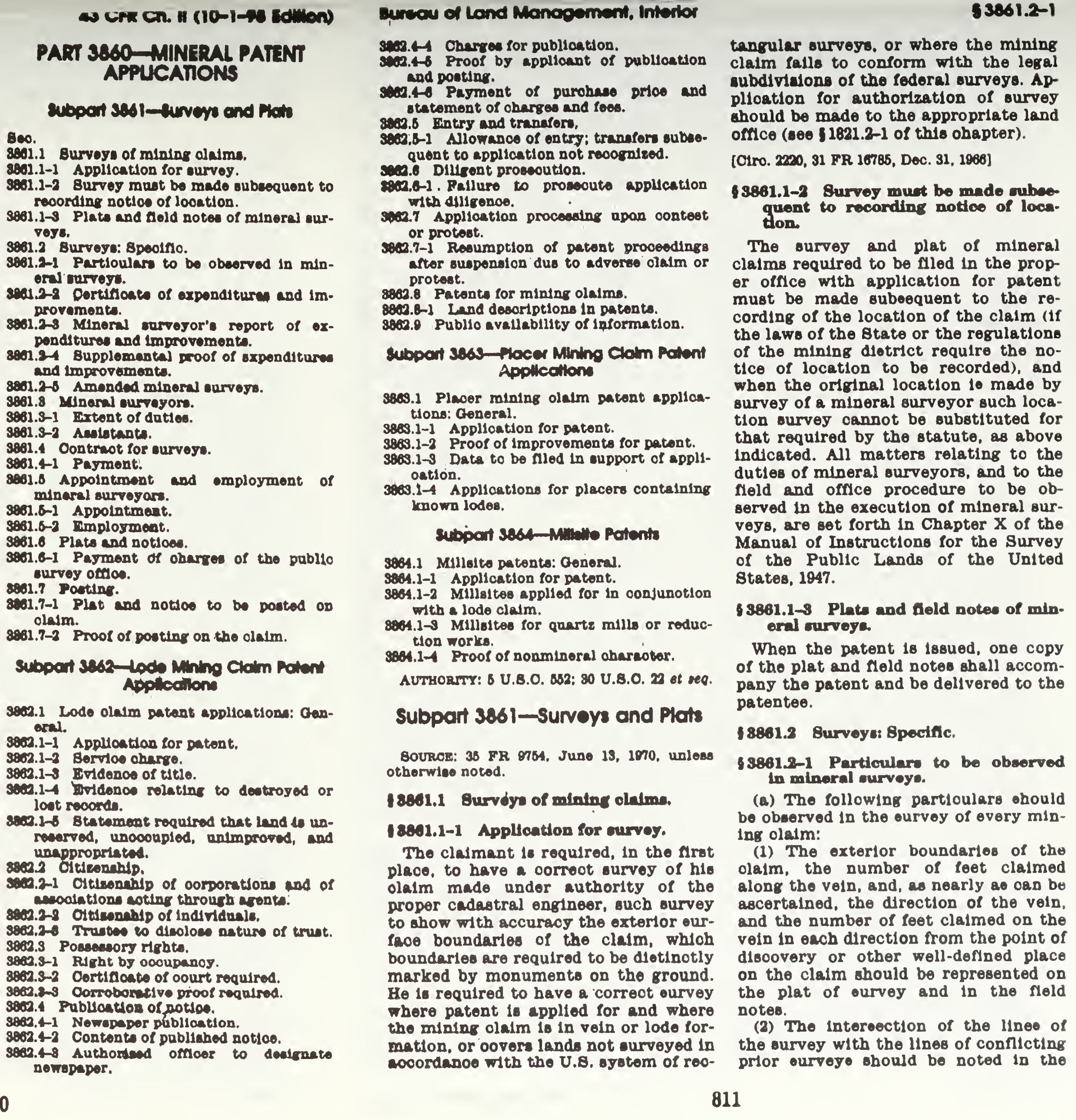
If the showing made is satisfactory, the authorized officer of the Bureau of Land Management will grant a deferment for an initial period not exceeding one year. The period shall begin on the date requested in the petition unless the approval sets a different date. Upon petition, the one year period may be renewed for another year if justifiable conditions exist. If the conditions justifying deferment are removed prior to the specified termination date of the deferment period, the deferment shall automatically be ended as of such earlier date.

§ 3852.5 When deferred assessment work is to be done.

All deferred assessment work may be begun at any time after the termination of the deferment but must be completed not later than the end of the assessment year commencing after the removal or cessation of the causes for the deferment or the expiration of any deferments granted under the act and shall be in addition to the annual assessment work required by law for such year.

LR-11 Mineral Patent Applications

(43 CFR 3860 - 3864)



PART 3860—MINERAL PATENT APPLICATIONS

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3864.1-4 Proof of nonmineral character.

AUTHORITY: 5 U.S.C. 552; 30 U.S.C. 22 *et seq.*

Subpart 3861—Surveys and Plats

SOURCE: 35 FR 9754, June 13, 1970, unless otherwise noted.

§ 3861.1 Surveys of mining claims.

§ 3861.1-1 Application for survey.

The claimant is required, in the first place, to have a correct survey of his claim made under authority of the proper cadastral engineer, such survey to show with accuracy the exterior surface boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground. He is required to have a correct survey where patent is applied for and where the mining claim is in vein or lode formation, or covers lands not surveyed in accordance with the U.S. system of rectangular surveys, or where the mining claim fails to conform with the legal subdivisions of the federal surveys. Application for authorization of survey should be made to the appropriate land office (see § 1821.2-1 of this chapter).

[Circ. 2220, 31 FR 16785, Dec. 31, 1966]

§ 3861.1-2 Survey must be made subsequent to recording notice of location.

The survey and plat of mineral claims required to be filed in the proper office with application for patent must be made subsequent to the recording of the location of the claim (if the laws of the State or the regulations of the mining district require the notice of location to be recorded), and when the original location is made by survey of a mineral surveyor such location survey cannot be substituted for that required by the statute, as above indicated. All matters relating to the duties of mineral surveyors, and to the field and office procedure to be observed in the execution of mineral surveys, are set forth in Chapter X of the Manual of Instructions for the Survey of the Public Lands of the United States, 1947.

§ 3861.1-3 Plats and field notes of mineral surveys.

When the patent is issued, one copy of the plat and field notes shall accompany the patent and be delivered to the patentee.

§ 3861.2 Surveys: Specific.

§ 3861.2-1 Particulars to be observed in mineral surveys.

(a) The following particulars should be observed in the survey of every mining claim:

(1) The exterior boundaries of the claim, the number of feet claimed along the vein, and, as nearly as can be ascertained, the direction of the vein, and the number of feet claimed on the vein in each direction from the point of discovery or other well-defined place on the claim should be represented on the plat of survey and in the field notes.

(2) The intersection of the lines of the survey with the lines of conflicting prior surveys should be noted in the

field notes and represented upon the plat.

(3) Conflicts with unsurveyed claims, where the applicant for survey does not claim the area in conflict, should be shown by actual survey.

(4) The total area of the claim embraced by the exterior boundaries should be stated, and also the area in conflict with each intersecting survey, substantially as follows:

	Acres
Total area of claim	10.50
Area in conflict with survey No. 302	1.56
Area in conflict with survey No. 948	2.33
Area in conflict with Mountain Maid lode mining claim, unsurveyed	1.48

(b) It does not follow that because mining surveys are required to exhibit all conflicts with prior surveys the area of conflict with prior surveys the area of conflict are to be excluded. The field notes and plat are made a part of the application for patent, and care should be taken that the description does not inadvertently exclude portions intended to be retained. The application for patent should state the portions to be excluded in express terms.

§ 3861.2-2 Certificate of expenditures and improvements.

(a) The claimant at the time of filing the application for patent, or at any time within the 60 days of publication, is required to file with the authorized officer a certificate of the office cadastral engineer that not less than $500 worth of labor has been expended or improvements made, by the applicant or his grantors, upon each location embraced in the application, or if the application embraces several contiguous locations held in common, that an amount equal to $500 for each location has been so expended upon, and for the benefit of, the entire group; that the plat filed by the claimant is correct; that the field notes of the survey, as filed, furnish such an accurate description of the claim as will, if incorporation in a patent, serve to identify the premises fully, and that such reference is made therein to natural objects or permanent monuments as will perpetuate and fix the locus thereof.

(b) In case of a lode and mill-site claim in the same survey the expenditure of $500 must be shown upon the lode claim.

§ 3861.2-3 Mineral surveyor's report of expenditures and improvements.

(a) In the mineral surveyor's report of the value of the improvements all actual expenditures and mining improvements made by the claimant or his grantors, having a direct relation to the development of the claim, must be included in the estimate.

(b) The expenditures required may be made from the surface or in running a tunnel, drifts, or crosscuts for the development of the claim. Expenditures for drill holes for the purpose of prospecting and securing data upon which further development of a group of lode mining claims held in common may be based are available toward meeting the statutory provision requiring an expenditure of $500 as a basis for patent as to all of the claims of the group situated in close proximity to such common improvement. Improvements of any other character, such as buildings, machinery, or roadways, must be excluded from the estimate, unless it is shown clearly that they are associated with actual excavations, such as cuts, tunnels, shafts, etc., are essential to the practical development of and actually facilitate the extraction of mineral from the claim.

(c) Improvements made by a former locator who has abandoned his claim cannot be included in the estimate, but should be described and located in the notes and plat.

§ 3861.2-4 Supplemental proof of expenditures and improvements.

If the value of the labor and improvements upon a mineral claim is less than $500 at the time of survey the mineral surveyor may file with the cadastral engineer supplemental proof showing $500 expenditure made prior to the expiration of the period of publication.

§ 3861.2-5 Amended mineral surveys.

(a) Inasmuch as amended surveys are ordered only by special instructions from the Bureau of Land Management, and the conditions and circumstances peculiar to each separate case and the object sought by the required amendment, alone govern all special matters relative to the manner of making such survey and the form and subject matter to be embraced in the field notes thereof, but few general rules applicable to all cases can be laid down.

(b) The expense of amended surveys, including amendment of plat and field notes, and office work in the Bureau of Land Management office will be borne by the claimant.

(c) The amended survey must be made in strict conformity with, or be embraced within, the lines of the original survey. If the amended and original surveys are identical, that fact must be clearly and distinctly stated in the field notes. If not identical, a bearing and distance must be given from each established corner of the amended survey to the corresponding corner of the original survey. The lines of the original survey, as found upon the ground, must be laid down upon the preliminary plat in such manner as to contrast and show their relation to the lines of the amended survey.

§ 3861.3 Mineral surveyors.

§ 3861.3-1 Extent of duties.

The duty of a mineral surveyor in any particular case ceases when he has executed the survey and returned the field notes and preliminary plat, with his report, to the cadastral engineer. He will not be allowed to prepare for the mining claimant the papers in support of his application for patent. He is not permitted to combine the duties of surveyor and notary public in the same case by administering oaths. It is preferable that both preliminary and final oaths of assistants should be taken before some officer duly authorized to administer oaths, other than the mineral surveyor. In cases, however, where great delay, expense, or inconvenience would result from a strict compliance with this section, the mineral surveyor is authorized to administer the necessary oaths to his assistants, but in each case where this is done, he will submit to the proper cadastral engineer a full written report of the circumstances which required his stated action; otherwise he must have absolutely nothing to do with the case, except in his official capacity as surveyor. He will not employ field assistants interested therein in any manner.

§ 3861.3-2 Assistants.

The employing of claimants, their attorneys, or parties in interest, as assistants in making surveys of mineral claims will not be allowed.

§ 3861.4 Contract for surveys.

§ 3861.4-1 Payment.

(a) The claimant is required, in all cases, to make satisfactory arrangements with the surveyor for the payment for his services and those of his assistants in making the survey, as the United States will not be held responsible for the same.

(b) The state director has no jurisdiction to settle differences relative to the payment of charges for field work, between mineral surveyors and claimants. These are matters of private contract and must be enforced in the ordinary manner, i.e., in the local courts. The Department has, however, authority to investigate charges affecting the official actions of mineral surveyors, and will, on sufficient cause shown, suspend or revoke their appointment.

§ 3861.5 Appointment and employment of mineral surveyors.

§ 3861.5-1 Appointment.

Pursuant to section 2334 of the Revised Statutes (30 U.S.C. 39), the Director or his delegate will appoint only a sufficient number of surveyors for the survey of mining claims to meet the demand for that class of work. Each appointee shall qualify as prescribed by the Director or his delegate. Applications for appointment as a mineral surveyor may be made at any office of the Bureau of Land Management listed in § 1821.2-1 of these regulations. A roster of appointed mineral surveyors will be available at these offices. Each appointee may execute mineral surveys in any State where mineral surveys are authorized.

[38 FR 30001, Oct. 31, 1973]

§ 3861.5–2 Employment.

A mineral claimant may employ any United States mineral surveyor qualified as indicated in paragraph (a) of this section to make the survey of his claim. All expenses of the survey of mining claims and the publication of the required notices of application for patent are to be borne by the mining claimants.

§ 3861.6 Plats and notices.

§ 3861.6–1 Payment of charges of the public survey office.

With regard to the platting of the claim and other office work in the Bureau of Land Management office, including the preparation of the copies of the plat and field notes to be furnished the claimant, that office will make an estimate of the cost thereof, which amount the claimant will deposit with it to be passed to the credit of the fund created by "Deposits by Individuals for Surveying Public Lands."

§ 3861.7 Posting.

§ 3861.7–1 Plat and notice to be posted on claim.

The claimant is required to post a copy of the plat of survey in a conspicuous place upon the claim, together with notice of his intention to apply for a patent therefor, which notice will give the date of posting, the name of the claimant, the name of the claim, the number of the survey, the mining district and county, and the names of adjoining and conflicting claims as shown by the plat of survey.

§ 3861.7–2 Proof of posting on the claim.

After posting the said plat and notice upon the premises the claimant will file with the proper manager two copies of such plat and the field notes of survey of the claim, accompanied by two copies of the statement of at least two credible witnesses that such plat and notice are posted conspicuously upon the claim, giving the date and place of such posting, and two copies of the notice so posted to be attached to and form a part of said statement.

Subpart 3862—Lode Mining Claim Patent Applications

SOURCE: 35 FR 9756, June 13, 1970, unless otherwise noted.

§ 3862.1 Lode claim patent applications: General.

§ 3862.1–1 Application for patent.

(a) At the time the proof of posting is filed the claimant must file in duplicate an application for patent showing that he has the possessory right to the claim, in virtue of a compliance by himself (and by his grantors, if he claims by purchase) with the mining rules, regulations, and customs of the mining district or State in which the claim lies, and with the mining laws of Congress, such statement to narrate briefly, but as clearly as possible, the facts constituting such compliance, the origin of his possession, and the basis of his claim to a patent. The application should contain a full description of the kind and character of the vein or lode and should state whether ore has been extracted therefrom; and if so, in what amount and of what value. It should also show the precise place within the limits of each of the locations embraced in the application where the vein or lode has been exposed or discovered and the width thereof. The showing in these regards should contain sufficient data to enable representatives of the Government to confirm the same by examination in the field and also enable the Bureau of Land Management to determine whether a valuable deposit of mineral actually exists within the limits of each of the locations embraced in the application.

(b) Every application for patent, based on a mining claim located after August 1, 1946, shall state whether the claimant has or has not had any direct or indirect part in the development of the atomic bomb project. The application must set forth in detail the exact nature of the claimant's participation in the project, and must also state whether as a result of such participation he acquired any confidential, official information as to the existence of deposits of uranium, thorium, or other fissionable source materials in the lands covered by his application.

(c) In applying for patent to a mining claim embracing land lying partly within one proper office and partly within another, a full set of papers must be filed in each office, except that one abstract of title and one proof of patent expenditures will be sufficient. Only one newspaper publication and one posting on the claim will be required, but proof thereof must be filed in both offices, the statements as to posting plat and notice on the claim to be signed within the respective land districts, as well, also, as all of the other statements required in mineral patent proceedings, except such as, under the law, may be signed outside of the land district wherein the land applied for is situated. Publication, payment of fees, and the purchase price of the land will be further governed by the provisions of §§ 1823.4(a) and 1861.2 of this chapter.

§ 3862.1–2 Service charge.

Each Mineral Patent Application shall be accompanied by a nonrefundable service charge of $250 per application and the initial mining claim or site plus $50 for each additional mining claim or site contained within the application.

[54 FR 48882, Dec. 2, 1988]

§ 3862.1–3 Evidence of title.

(a) Each patent application must be supported by either a certificate of title or an abstract of title certified to by the legal custodian of the records of locations and transfers of mining claims or by an abstracter of titles. The certificate of title or certificate to an abstract of title must be by a person, association, or corporation authorized by the State laws to execute such a certificate and acceptable to the Bureau of Land Management.

(b) A certificate of title must conform substantially to a form approved by the Director.

(c) Each certificate of title or abstract of title must be accompanied by single copies of the certificate or notice of the original location of each claim, and of the certificates of amended or supplemental locations thereof, certified to by the legal custodian of the record of mining locations.

(d) A certificate to an abstract of title must state that the abstract is a full, true, and complete abstract of the location certificates or notices, and all amendments thereof, and of all deeds, instruments, or actions appearing of record purporting to convey or to affect the title to each claim.

(e) The application for patent will be received and filed if the certificate of title or an abstract is brought down to a day reasonably near the date of the presentation of the application and shows full title in the applicant, who must as soon as practicable thereafter file a supplemental certificate of title or an abstract brought down so as to include the date of the filing of the application.

§ 3862.1–4 Evidence relating to destroyed or lost records.

In the event of the mining records in any case having been destroyed by fire or otherwise lost, a statement of the fact should be made, and secondary evidence of possessory title will be received, which may consist of the statement of the claimant, supported by those of any other parties cognizant of the facts relative to his location, occupancy, possession, improvements, etc.; and in such case of lost records, any deeds, certificates of location or purchase, or other evidence which may be in the claimant's possession and tend to establish his claim, should be filed.

§ 3862.1–5 Statement required that land is unreserved, unoccupied, unimproved, and unappropriated.

Each person making application for patent under the mining laws, for lands in Alaska, must furnish a duly corroborated statement showing that no portion of the land applied for is occupied or reserved by the United States, so as to prevent its acquisition under said laws; that the land is not occupied or claimed by natives of Alaska; and that the land is unoccupied, unimproved and unappropriated by any person claiming the same other than the applicant.

§ 3862.2 Citizenship.

§ 3862.2-1 Citizenship of corporations and of associations acting through agents.

The proof necessary to establish the citizenship of applicants for mining patents must be made in the following manner: In case of an incorporated company, a certified copy of its charter or certificate of incorporation must be filed. In case of an association of persons unincorporated, the statement of their duly authorized agent, made upon his own knowledge or upon information and belief, setting forth the residence of each person forming such association, must be submitted. This statement must be accompanied by a power of attorney from the parties forming such association, authorizing the person who makes the citizenship showing to act for them in the matter of their application of patent.

§ 3862.2-2 Citizenship of individuals.

(a) In case of an individual or an association of individuals who do not appear by their duly authorized agent, the statement of each applicant, showing whether he is a native or naturalized citizen, when and where born, and his residence, will be required.

(b) In case an applicant has declared his intention to become a citizen or has been naturalized, his statement must show the date, place, and the court before which he declared his intention, or from which his certificate of citizenship issued, and present residence.

§ 3862.2-3 Trustee to disclose nature of trust.

Any party applying for patent as trustee must disclose fully the nature of the trust and the name of the cestui que trust; and such trustee, as well as the beneficiaries, must furnish satisfactory proof of citizenship; and the names of beneficiaries, as well as that of the trustee, must be inserted in the final certificate of entry.

§ 3862.3 Possessory rights.

§ 3862.3-1 Right by occupancy.

(a) The provisions of R.S. 2332 (30 U.S.C. 38), greatly lessen the burden of proof, more especially in the case of old claims located many years since, the records of which, in many cases, have been destroyed by fire, or lost in other ways during the lapse of time, but concerning the possessory right to which all controversy or litigation has long been settled.

(b) When an applicant desires to make his proof of possessory right in accordance with this provision of law, he will not be required to produce evidence of location, copies of conveyances, or abstracts of title, as in other cases, but will be required to furnish a duly certified copy of the statute of limitation of mining claims for the State, together with his statement giving a clear and succinct narration of the facts as to the origin of his title, and likewise as to the continuation of his possession of the mining ground covered by his application; the area thereof; the nature and extent of the mining that has been done thereon; whether there has been any opposition to his possession, or litigation with regard to his claim, and if so, when the same ceased; whether such cessation was caused by compromise or by judicial decree, and any additional facts within the claimant's knowledge having a direct bearing upon his possession and bona fides which he may desire to submit in support of his claim.

§ 3862.3-2 Certificate of court required.

There should likewise be filed a certificate, under seal of the court having jurisdiction of mining cases within the judicial district embracing the claim, that no suit or action of any character whatever involving the right of possession to any portion of the claim applied for is pending, and that there has been no litigation before said court affecting the title to said claim or any part thereof for a period equal to the time fixed by the statute of limitations for mining claims in the State as aforesaid other than that which has been finally decided in favor of the claimant.

§ 3862.3-3 Corroborative proof required.

The claimant should support his narrative of facts relative to his possession, occupancy, and improvements by corroborative testimony of any disinterested person or persons of credibility who may be cognizant of the facts in the case and are capable of testifying understandingly in the premises.

§ 3862.4 Publication of notice.

§ 3862.4-1 Newspaper publication.

Upon the receipt of applications for mineral patent and accompanying papers, if no reason appears for rejecting the application, the authorized officer will, at the expense of the claimant (who must furnish the agreement of the publisher to hold applicant for patent alone responsible for charges of publication), publish a notice of such application for the period of 60 days in a newspaper published nearest to the claim. If the notice is published in a daily paper, it shall be published in the Wednesday issue for nine consecutive weeks; if weekly, in nine consecutive issues; if semiweekly or triweekly, in the issue of the same day of each week for nine consecutive weeks. In all cases the first day of issues shall be excluded in estimating the period of 60 days.

[35 FR 9756, June 13, 1970, as amended at 41 FR 21642, May 27, 1976]

§ 3862.4-2 Contents of published notice.

The notices published as required by the preceding section must embrace all the data given in the notice posted upon the claim. In addition to such data the published notice must further indicate the locus of the claim by giving the connecting line, as shown by the field notes and plat, between a corner of the claim and a United States mineral monument or a corner of the public survey, and thence the boundaries of the claim by courses and distances.

§ 3862.4-3 Authorized officer to designate newspaper.

The authorized officer shall have the notice of application for patent published in a paper of established character and general circulation, to be by him designated as being the newspaper published nearest the land.

§ 3862.4-4 Charges for publication.

(a) The charge for the publication of notice of application for patent in a mining case in all districts shall not exceed the legal rates allowed by the laws of the several States for the publication of legal notices wherein the notice is published.

(b) It is expected that these notices shall not be so abbreviated as to curtail the description essential to a perfect notice, and on the other hand that they shall not be of unnecessary length. The printed matter must be set solid without paragraphing or any display in the heading and shall be in the usual body type used in legal notices. If other type is used, no allowance will be made for additional space on that account. The number of solid lines only used in advertising by actual count will be allowed. All abbreviations and copy must be strictly followed. The following is a sample of advertisement set up in accordance with Government requirements and contains all the essential data necessary for publication:

M. A. No. 04421, U. S. Land Office, Elko, Nevada, October 5, 1921. Notice is hereby given that the Jarbidge Buhl Mining Company by W. H. Hudson, attorney in fact, of Jarbidge, Nevada, has made application for patent to the Altitude, Altitude No. 1, Altitude No. 3, and Altitude Annex, lode mining claims. Survey No. 4470, in unsurveyed T. 46 N., R. 58 E., M. D. B. and M., in the Jarbidge mining district, Elko County, Nevada, described as follows: Beginning at corner No. 1, Altitude No. 3, whence the quarter corner of the south boundary of sec. 34 T. 46 N., R. 58 E., M. D. B. and M., bears south 41°54′ west 7285.63 feet, thence north 20°14′ west 1500 feet to corner No. 2 of said lode; thence north 69°46′ east 569 feet to corner No. 3 of said lode; thence south 20°14′ east 417.5 feet to corner 2, Altitude No. 1; thence north 69°46′ east 1606.1 feet to corner No. 3, Altitude lode; thence south 20°14′ east 1500 feet, to corner No. 4 of said lode; thence south 69°46′ west 1606.1 feet, to corner No. 1, Altitude No. 1 lode; thence North 20°14′ west 417.5 feet to corner No. 4, Altitude No. 3; thence south 69°46′ west 569 feet to point of beginning. There are no adjoining or conflicting claims. The location notices are recorded in Book 17, pages 373 and 374, and in Book 15, pages 52 and 53, mining locations, Elko County. Nevada, John E. Robbins, Manager.

(c) For the publication of citations in contests or hearings, involving the character of lands, the charges may not exceed the rates provided for similar notices by the law of the State.

§ 3862.4–5 Proof by applicant of publication and posting.

After the 60-day period of newspaper publication has expired, the claimant will furnish from the office of publication a sworn statement that the notice was published for the statutory period, giving the first and last day of such publication, and his own statement showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during said 60-day publication, giving the dates.

§ 3862.4–6 Payment of purchase price and statement of charges and fees.

Upon the filing of the statement required by the preceding section, the authorized officer will, if no adverse claim was filed in his office during the period of publication, and no other objection appears, permit the claimant to pay for the land to which he is entitled at the rate of $5 for each acre and $5 for each fractional part of an acre, except as otherwise provided by law, issuing the usual receipt therefor. The claimant will also make a statement of all charges and fees paid by him for publication and surveys, together with all fees and money paid the authorized officer of the proper office, and a patent shall be issued thereon if found regular.

§ 3862.5 Entry and transfers.

§ 3862.5–1 Allowance of entry; transfers subsequent to application not recognized.

No entry will be allowed until the authorized officer has satisfied himself, by careful examination, that proper proofs have been filed upon the points indicated in the law and official regulations. Transfers made subsequent to the filing of the application for patent will not be considered, but entry will be allowed and patent issued in all cases in the name of the applicant for patent, the title conveyed by the patent, of course, in each instance inuring to the transferee of such applicant where a transfer has been made pending the application for patent.

§ 3862.6 Diligent prosecution.

§ 3862.6–1 Failure to prosecute application with diligence.

The failure of an applicant for patent to a mining claim to prosecute his application to completion, by filing the necessary proofs and making payment for the land, within a reasonable time after the expiration of the period of publication of notice of the application, or after the termination of adverse proceedings in the courts, constitutes a waiver by the applicant of all rights obtained by the earlier proceedings upon the application.

§ 3862.7 Application processing upon contest or protest.

§ 3862.7–1 Resumption of patent proceedings after suspension due to adverse claim or protest.

The proceedings necessary to the completion of an application for patent to a mining claim, against which an adverse claim or protest has been filed, if taken by the applicant at the first opportunity afforded therefor under the law and departmental practice, will be as effective as if taken at the date when, but for the adverse claim or protest, the proceedings on the application could have been completed.

§ 3862.8 Patents for mining claims.

§ 3862.8–1 Land descriptions in patents.

The land description in a patent for a lode mining claim, for a millsite, or for a placer claim not consisting of legal subdivisions, shall hereafter consist of the names and survey numbers of the claims being patented and those being excluded, or of the names of the excluded claims if they are unsurveyed, or of the legal subdivisions of excluded land covered by homestead or other nonmineral entry. The land description shall refer to the field notes of survey and the plat thereof for a more particular description and the patent shall expressly make them a part thereof. Where shown by the mineral entry the patent shall give the actual or approximate legal subdivision, section, township and range, the name of the county and of the mining district, if any, wherein the claims are situated. A

copy of the plat and field notes of each mineral survey patented will be furnished to the patentee.

§ 3862.9 Public availability of information.

(a) All data and information concerning Federal and Indian minerals submitted under this part 3860 are subject to part 2 of this title. Part 2 of this title includes the regulations of the Department of the Interior covering the public disclosure of data and information contained in Department of the Interior records. Certain mineral information not protected from public disclosure under part 2 of this title may be made available for inspection without a Freedom of Information Act (5 U.S.C. 552) request.

(b) When you submit data and information under this part 3860 that you believe to be exempt from disclosure to the public, you must clearly mark each page that you believe includes confidential information. BLM will keep all data and information confidential to the extent allowed by §2.13(c) of this title.

[63 FR 52955, Oct. 1, 1998]

EFFECTIVE DATE NOTE: At 63 FR 52955, Oct. 1, 1998, §3862.9 was added, effective Nov. 2, 1998.

Subpart 3863—Placer Mining Claim Patent Applications

SOURCE: 35 FR 9758, June 13, 1970, unless otherwise noted.

§ 3863.1 Placer mining claim patent applications: General.

(a) The proceedings to obtain patents for placer claims, including all forms of mineral deposits excepting veins of quartz or other rock in place, are similar to the proceedings prescribed for obtaining patents for vein or lode claims; but where a placer claim shall be upon surveyed lands, and conforms to legal subdivisions, no further survey or plat will be required. Where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands.

(b) The price of placer claims is fixed at $2.50 per acre or fractional part of an acre.

§ 3863.1–1 Application for patent.

§ 3863.1–2 Proof of improvements for patent.

The proof of improvements must show their value to be not less than $500 and that they were made by the applicant for patent or his grantors. This proof should consist of the statement of two or more disinterested witnesses.

§ 3863.1–3 Data to be filed in support of application.

(a) In placer applications, in addition to the recitals necessary in and to both vein or lode and placer applications, the placer application should contain, in detail, such data as will support the claim that the land applied for is placer ground containing valuable mineral deposits not in vein or lode formation and that title is sought not to control water courses or to obtain valuable timber but in good faith because of the mineral therein. This statement, of course, must depend upon the character of the deposit and the natural features of the ground, but the following details should be covered as fully as possible: If the claim be for a deposit of placer gold, there must be stated the yield per pan, or cubic yard, as shown by prospecting and development work, distance to bedrock, formation and extent of the deposit, and all other facts upon which he bases his allegation that the claim is valuable for its deposits of placer gold. If it be a building stone or other deposit than gold claimed under the placer laws, he must describe fully the kind, nature, and extent of the deposit, stating the reasons why same is by him regarded as a valuable mineral claim. He will also be required to describe fully the natural features of the claim; streams, if any, must be fully described as to their course, amount of water carried, fall within the claim; and he must state kind and amount of timber and other vegetation thereon and adaptability to mining or other uses.

(b) If the claim be all placer ground, that fact must be stated in the application and corroborated by accompanying proofs; if of mixed placers and lodes, it should be so set out, with a description of all known lodes situated within the boundaries of the claim. A specific declaration, such as is required by R.S. 2333 (30 U.S.C. 37) must be furnished as to each lode intended to be claimed. All other known lodes are, by the silence of the applicant, excluded by law from all claim by him, of whatsoever nature, possessory or otherwise.

(c) While these data are required as a part of the mineral surveyor's report in case of placers taken by special survey, it is proper that the application for patent incorporate these facts.

(d) Inasmuch as in case of claims taken by legal subdivisions, no report by a mineral surveyor is required, the claimant, in his application in addition to the data above required, should describe in detail the shafts, cuts, tunnels, or other workings claimed as improvements, giving their dimensions, value, and the course and distance thereof to the nearest corner of the public surveys.

(e) The statement as to the description and value of the improvements must be corroborated by the statements of two disinterested witnesses. The proof showing must be made in duplicate. See 51 L.D. 265 and 52 L.D. 190.

(f) Applications awaiting entry, whether published or not, must be made to conform to this part, with respect to proof as to the character of the land. Entries already made will be suspended for such additional proofs as may be deemed necessary in each case.

§ 3863.1–4 Applications for placers containing known lodes.

Applicants for patent to a placer claim, who are also in possession of a known vein or lode included therein, must state in their application that the placer includes such vein or lode. The published and posted notices must also include such statement. If veins or lodes lying within placer locations are owned by other parties, the fact should be distinctly stated in the application for patent and in all the notices. But in all cases whether the lode is claimed or excluded, it must be surveyed and marked upon the plat, the field notes and plat giving the area of the lode claim or claims and the area of the placer separately. An application which omits to claim such known vein or lode must be construed as a conclusive declaration that the applicant has no right of possession to the vein or lode. Where there is no known lode or vein, the fact must appear by the statement of two or more witnesses.

Subpart 3864—Millsite Patents

Source: 35 FR 9758, June 13, 1970, unless otherwise noted.

§ 3864.1 Millsite patents: General.

§ 3864.1–1 Application for patent.

(a) Land entered as a millsite must be shown to be nonmineral. Millsites are simply auxiliary to the working of mineral claims. R.S. 2337 (30 U.S.C. 42) provides for the patenting of millsites.

(b) To avail themselves of this provision of law, parties holding the possessory right to a vein or lode claim, and to a piece of nonmineral land not contiguous thereto for mining or milling purposes, not exceeding the quantity allowed for such purpose by R.S. 2337, or prior laws, under which the land was appropriated, the proprietors of such vein or lode may file in the proper office their application for a patent, which application, together with the plat and field notes, may include, embrace, and describe, in addition to the vein or lode claim, such noncontiguous millsite, and after due proceedings as to notice, etc., a patent will be issued conveying the same as one claim. The owner of a patented lode may, by an independent application, secure a millsite, if good faith is manifest in its use or occupation in connection with the lode and no adverse claim exists.

(c) The Act of March 18, 1960 (74 Stat. 7; 43 U.S.C. 42(b)), amends R.S. 2337 to allow the holders of possessory right in a placer claim to hold nonmineral land for mining, milling, processing beneficiation, or other operations in connection with the placer claim. Applications for patent for such millsites are subject to the same requirements as to survey and notice as one applicable to placer mining claims. No one millsite may exceed five acres and payment will be $2.50 per acre or fraction thereof.

§ 3864.1–2 Millsites applied for in conjunction with a lode claim.

Where the original survey includes a lode claim and also a millsite the lode claim should be described in the plat and field notes as "Sur. No. 37, A," and the millsite as "Sur. No. 37, B," or whatever may be its appropriate numerical designation; the course and distance from a corner of the millsite to a corner of the lode claim to be invariably given in such plat and field notes, and a copy of the plat and notice of application for patent must be conspicuously posted upon the millsite as well as upon the vein or lode claim for the statutory period of 60 days. In making the entry no separate receipt or certificate need be issued for the millsite, but the whole area of both lode and millsite will be embraced in one entry, the price being $5 for each acre and fractional part of an acre embraced by such lode and millsite claim.

§ 3864.1–3 Millsites for quartz mills or reduction works.

In case the owner of a quartz mill or reduction works is not the owner or claimant of a vein or lode claim the law permits him to make application therefor in the same manner prescribed for mining claims, and after due notice and proceedings, in the absence of a valid adverse filing, to enter and receive a patent for his millsite at the price named in the preceding section.

§ 3864.1–4 Proof of nonmineral character.

In every case there must be satisfactory proof that the land claimed as a millsite is not mineral in character, which proof may, where the matter is unquestioned, consist of the statement of two or more persons capable, from acquaintance with the land to testify understandingly.

United States Department of the Interior

TAKE PRIDE IN AMERICA

BUREAU OF LAND MANAGEMENT
California State Office
2800 Cottage Way, Room E-2845
Sacramento, California 95825-1889

IN REPLY REFER TO:

March 2, 1993

3800
CA-921.2

Instruction Memorandum No. CA-93-053, Change 1
Expires: 9/30/94

To: All Field Offices

From: Deputy State Director, Mineral Resources

Subject: Examination of Mill Sites for Patent Purposes

This Instruction Memorandum (IM) is not represented as a complete mill site validity examination manual, but is proposed to assist in answering questions arising from recent mill site cases. This guidance is simply a reiteration of a fairly recent IBLA case and a 9th Circuit Court decision issued earlier this year. It is written with the purpose of addressing elements necessary before the Secretary of the Interior may authorize disposal of land for mill site purposes under the mining laws.

The two court cases; United States v. Swanson, 93 IBLA 1 (1986) and United States v. Bagwell, No. 90-5841, D. Cal. April 21, 1992, set forth concepts of a valid mill site, which are necessary to warrant use and disposal of land under the mining laws and regulations which are as follows:

1. Proper equipment, improvements and on the ground activity which indicates an intent to undertake milling.

2. Sufficient quality and quantity of mineral deposit that is or can be readily processed by the mill.

3. Market for the processed ore.

4. Economic analysis for the operating and capital costs of milling.

5. A determination that a prudent person would engage in this activity.

6. Length of time of nonuse for mining and milling purposes and the length of time that might reasonably be expected to be consumed in putting the millsites to use.

Considerations that may assist the mineral examiner to formulate a conclusion for elements 1 through 6 above, include, but are not limited to are:

a. Size and operation of the tailings pond.

b. Electrical and water distribution system.

c. MSHA or OSHA inspection reports.

d. Receipts for the purchase of milling supplies.

e. Receipts for the sale of mineral commodity.

Elements 1 through 6 must be addressed by the mineral examiner in the mineral report and all must be found in the affirmative to clear list for patent. This list is applicable to conventional mill sites, however, a mill site may also be located and patented if used for overburden dumps, tailing ponds, water wells and living quarters. Even these must be supported by active and viable mining or milling operations that are being carried out in a prudent fashion.

For dependent or independent mill sites, the mineral examiner needs to confirm that the lands are non-mineral in character, that the improvements are fully operational, and verify the economic value of the ore source. Copies of the agreements and sales contracts between all parties should be made available to the examiner.

On another subject, a patent application for a mill site often involves the same land that the claimant is utilizing under an approved Plan of Operations (POO). The question then arises as to what impact the approved plan may have on the patent application? The plan and the patent application are two distinct and separate actions. The plan and the patent application are two distinct and separate actions. The plan is submitted to the BLM as a requirement of 43 CFR 3809.1-4 and discusses measures to be taken to prevent unnecessary or undue degradation and provides for reasonable reclamation. An approved plan is a temporary land use document with no ownership transfer from the public lands. The approved plan does not control or influence the mineral examiners responsibility to clearlist only the minimal acreage that is necessary for the milling operation. Please keep in mind the requirement in the Swanson case that when patenting millsites, the smallest aliquot part is 2½ acres.

This guidance is not intended to be used for judging whether or not a mill site claimant is occupying mill sites in good faith where all the elements of patenting a mill site have not yet been made. For example, there are many situations where an operator is serious about milling ore but has not begun to do so. A logical approach to this situation is to authorize use under 43 CFR 3809 and allow the operator to demonstrate a diligent effort (good faith) to move to the point of patent. However, it may be appropriate to use the elements herein as a criteria in "Surface Use Determinations" on a case by case basis.

Please contact Jim Hamilton or George DaBai at (916) 978-4735 with any questions.

Robert M. Anderson

DISTRIBUTION:
WO-660, MIB, Room 3411
All BLM SDs (Attn: Mineral Resources)

LR-12 Adverse Claims, Protests and Conflicts

(43 CFR 3870 - 3873)

PART 3870—ADVERSE CLAIMS, PROTESTS AND CONFLICTS

Subpart 3871—Adverse Claims

Sec.
3871.1 Filing of claim.
3871.2 Statement of claim.
3871.3 Action by authorized officer.
3871.4 Patent proceedings stayed when adverse claim is filed; exception.
3871.5 Termination of adverse suit.
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3872.1 Protest against mineral applications.
3872.2 Procedure in contest cases.
3872.3 Presumption as to land returned as mineral.
3872.4 Procedure to dispute record character of land.
3872.5 Testimony at hearings to determine character of lands.

Subpart 3873—Segregation

3873.1 Segregation of mineral from nonmineral land.
3873.2 Effect of decision that land is mineral.
3873.3 Non-mineral entry of residue of subdivisions invaded by mining claims.

Subpart 3871—Adverse Claims

SOURCE: 35 FR 9759, June 13, 1970, unless otherwise noted.

§ 3871.1 Filing of claim.

(a) An adverse claim must be filed with the authorized officer of the proper office where the application for patent is filed or with the manager of the district in which the land is situated at the time of filing the adverse claim. The claim may be filed by the adverse claimant, or by his duly authorized agent or attorney in fact cognizant of the facts stated.

(b) Where an agent or attorney in fact files the adverse claim he must furnish proof that he is such agent or attorney.

(c) The agent or attorney in fact must sign the statement of the adverse claim within the land district where the claim is situated, stating that it was so signed.

(d) A fee of $10 is payable by an adverse claimant at the time of filing his adverse claim. This charge is not refundable.

§ 3871.2 Statement of claim.

(a) The adverse claim must fully set forth the nature and extent of the interference or conflict; whether the adverse party claims as a purchaser for valuable consideration or as a locator. If the former, a certified copy of the original location, the original conveyance, a duly certified copy thereof, or an abstract of title from the office of the proper recorder should be furnished, or if the transaction was a merely verbal one he will narrate the circumstances attending the purchase, the date thereof, and the amount paid, which facts should be supported by the statement of one or more witnesses, if any were present at the time, and if he claims as a locator he must file a duly certified copy of the location from the office of the proper recorder.

(b) In order that the "boundaries" and "extent" of the claim may be shown, it will be incumbent upon the adverse claimant to file a plat showing his entire claim, its relative situation or position with the one against which he claims, and the extent of the conflict: *Provided, however*, That if the application for patent describes the claim by legal subdivisions, the adverse claimant, if also claiming by legal subdivisions, may describe his adverse claim in the same manner without further survey or plat. If the claim is not described by legal subdivisions it will generally be more satisfactory if the plat thereof is made from an actual survey by a mineral surveyor and its correctness officially certified thereon by him.

§ 3871.3 Action by authorized officer.

(a) Upon the adverse claim being filed within the 60-day period of publication, the authorized officer will immediately give notice in writing to the parties that such adverse claim has been filed, informing them that the party who filed the adverse claim will be required within 30 days from the date of such filing to commence proceedings in a court of competent jurisdiction to determine the question of right of possession, and to prosecute the same with reasonable diligence to final judgment, and that should such adverse claimant fail to do so, his adverse claim will be considered waived and the application for patent be allowed to proceed upon its merits.

(b) The Act of September 21, 1961 (Pub. L. 87-260; 75 Stat. 541), amends the Act of June 7, 1910 (36 Stat. 459; 48 U.S.C. 386), and provides that adverse suits against mineral entries in Alaska shall be instituted within the 60-day time limit set forth in R.S. 2325 and 2326, (30 U.S.C. 29, 30). The act further provides that where a mineral patent application was filed prior to the effective date of the act, the time in which to file adverse suits is governed by the Act of June 7, 1910. Where a mineral patent application was filed prior to September 21, 1961, the entry will not be allowed until after the expiration of eight months following the publication period.

§ 3871.4 Patent proceedings stayed when adverse claim is filed; exception.

When an adverse claim is filed as aforesaid, the authorized officer will endorse upon the same the precise date of filing and preserve a record of the date of notifications issued thereon; and thereafter all proceedings on the application for patent will be stayed with the exception of the completion of the publication and posting of notices and plat and the filing of the necessary proof thereof, until the controversy shall have been finally adjudicated in court or the adverse claim waiver or withdrawn.

§ 3871.5 Termination of adverse suit.

(a) Where an adverse claim has been filed and suit thereon commenced within the statutory period and final judgment rendered determining the right of possession, it will not be sufficient to file with the authorized officer a certificate of the clerk of the court setting forth the facts as to such judgment, but the successful party must, before he is allowed to make entry, file a certified copy of the judgment roll, together with the other evidence required by R.S. 2326 (30 U.S.C. 30), and a certificate of the clerk of the court under the seal of the court showing, in accord with the record facts of the case, that the judgment mentioned and described in the judgment roll aforesaid is a final judgment; that the time for appeal therefrom has, under the law, expired, and that no such appeal has been filed, or that the defeated party has waived his right to appeal. Other evidence showing such waiver or an abandonment of the litigation may be filed.

(b) Where such suit has been dismissed, a certificate of the clerk of the court to that effect or a certified copy of the order of dismissal will be sufficient.

(c) After an adverse claim has been filed and suit commenced, a relinquishment or other evidence of abandonment of the adverse claim will not be accepted, but the case must be terminated and proof thereof furnished as required by the last two paragraphs.

§ 3871.6 Certificate required when no suit commenced.

Where an adverse claim has been filed but no suit commenced against the applicant for patent within the statutory period, a certificate to that effect by the clerk of the State court having jurisdiction in the case, and also by the clerk of the district court of the United States for the district in which the claim is situated, will be required.

Subpart 3872—Protests, Contests and Conflicts

SOURCE: 35 FR 9760, June 13, 1970, unless otherwise noted.

§ 3872.1 Protest against mineral applications.

(a) At any time prior to the issuance of patent, protest may be filed against the patenting of the claim as applied for, upon any ground tending to show that the applicant has failed to comply with the law in any matter essential to a valid entry under the patent proceedings. Such protest cannot, however, be made the means of preserving a surface conflict lost by failure to adverse or lost by the judgment of the court in an adverse suit. One holding a present joint interest in a mineral location included in an application for patent who is excluded from the application, so that his interest would not be protected by the issue of patent thereon, may protest against the issuance of a patent as applied for, setting forth in such protest the nature and extent of his interest in such location, and such a protestant will be deemed a party in interest entitled to appeal. This results from the holding that a co-owner excluded from an application for patent does not have an "adverse" claim within the meaning of R.S. 2325 and 2326 (30 U.S.C. 29, 30). (See Turner v. Sawyer. 150 U.S. 578–586, 37 L. ed. 1189–1191.)

(b) Such protest filed by any party, other than a Federal agency, must be accompanied by a $10 nonrefundable service charge.

§ 3872.2 Procedure in contest cases.

Parts 1840 and 1850 of this chapter, in cases before the United States, the Bureau of Land Management, and the Department of the Interior will, so far as applicable, govern in all cases and proceedings arising in contests and hearings to determine the character of lands.

§ 3872.3 Presumption as to land returned as mineral.

Public land returned upon the survey records as mineral shall be withheld from entry as agricultural land until the presumption arising from such a return shall be overcome.

§ 3872.4 Procedure to dispute record character of land.

(a) When lands returned as mineral are sought to be entered as agricultural under laws which require the submission of final proof after due notice by publication and posting, the filing of the proper nonmineral statement in the absence of allegations that the land is mineral will be deemed sufficient as a preliminary requirement. A satisfactory showing as to character of land must be made when final proof is submitted.

(b) In case of application to enter, locate, or select such lands as agricultural, under laws in which the submission of final proof after due publication and posting is not required, notice thereof must first be given by publication for 60 days and posting in the local office during the same period, and affirmative proof as to the character of the land submitted. In the absence of allegations that the land is mineral, and upon compliance with this requirement, the entry location, or selection will be allowed, if otherwise regular.

(c) Where as against the claimed right to enter such lands as agricultural it is alleged that the same are mineral, or are applied for as mineral lands, the proceedings in this class of cases will be in the nature of a contest, and the practice will be governed by the rules in force in contest cases.

§ 3872.5 Testimony at hearings to determine character of lands.

(a) At hearings to determine the character of lands the claimants and witnesses will be thoroughly examined with regard to the character of the land; whether the same has been thoroughly prospected; whether or not there exists within the tract or tracts claimed any lode or vein of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposit which has ever been claimed, located, recorded, or worked; whether such work is entirely abandoned, or whether occasionally resumed; if such lode does exist, by whom claimed, under what designation, and in which subdivision of the land it lies; whether any placer mine or mines exist upon the land; if so, what is the character thereof, whether of the shallow-surface description, or of the deep cement, blue lead, or gravel deposits; to what extent mining is carried on when water can be obtained, and what the facilities are for obtaining water for mining purposes; upon what particular 10-acre subdivisions mining has been done, and at what time the land was abandoned for mining purposes, if abandoned at all. In every case, where practicable, an adequate quantity or number of representative samples of the alleged mineral-bearing matter or material should be offered in evidence, with proper identification, to be considered in connection with the record, with which they will be transmitted upon each appeal that may be taken. Testimony may be submitted as to the geological formation and development of mineral on adjoining or adjacent lands and their relevancy.

(b) The testimony should also show the agricultural capacities of the land, what kind of crops are raised thereon, the value thereof; the number of acres actually cultivated for crops of cereals or vegetables, and within which particular 10-acre subdivision such crops are raised; also which of these subdivisions embrace the improvements, giving in detail the extent and value of the improvements, such as house, barn, vineyard, orchard, fencing, etc., and mining improvements.

(c) The testimony should be as full and complete as possible; and in addition to the leading points indicated above, where an attempt is made to prove the mineral character of lands which have been entered under the agricultural laws, it should show at what date, if at all, valuable deposits of minerals were first known to exist on the lands.

Subpart 3873—Segregation

SOURCE: 35 FR 9760, June 13, 1970, unless otherwise noted.

§ 3873.1 Segregation of mineral from non-mineral land.

Where a survey is necessary to set apart mineral from non-mineral land the appropriate authorized officer will have special instructions prepared outlining the procedure to be followed in the required survey. The survey will be executed at the expense of the United States. Where, in stock-raising homestead entries, it has been satisfactorily established that there are existent prior unpatented mining claims, the segregation of the latter is not strictly a segregation of mineral from non-mineral land, but rather the procedure adopted to define the boundaries of and provide a legal description for that part of the homestead entry which is not within the segregated mining claims.

§ 3873.2 Effect of decision that land is mineral.

The fact that a certain tract of land is decided upon testimony to the mineral in character is by no means equivalent to an award of the land to a miner. In order to secure a patent for such land, he must proceed as in other cases, in accordance with this part.

§ 3873.3 Non-mineral entry of residue of subdivisions invaded by mining claims.

(a) The authorized officer will accept and approve any application (if otherwise regular), to make a non-mineral entry of the residue of any original lot or legal subdivision which is invaded by mining claims if the tract has already been lotted to exclude such claims. If not so lotted, and if the original lot or legal subdivision is invaded by patented mining claims, or by mining claims covered by pending applications for patent which the non-mineral applicant does not desire to contest, or by approved mining claims of established mineral character, the authorized officer will accept and approve the application (if otherwise regular), exclusive of the conflict with the mining claims.

(b) The authorized officer will allow no non-mineral application for any portion of an original lot or 40-acre legal subdivision, where the tract has not been lotted to show the reduced area by reason of approved surveys of mining claims for which applications for patent have not been filed, until the non-mineral applicant submits a satisfactory showing that such surveyed claims are in fact mineral in character. Applications to have lands which are asserted to be mineral, or mining locations, segregated by survey with a view to the non-mineral appropriation of the remainder, will be made to the authorized officer of the proper office. Such applications must be supported by a written statement of the party in interest, duly corroborated by two or more disinterested persons, or by such other or further evidence as may be required, that the land sought to be segregated as mineral is in fact mineral in character.

NEW FOREST SERVICE REGULATIONS REGARDING DISPOSAL OF MINERAL MATERIALS (36 CFR 228)

Note: The following regulations regarding common variety materials were issued on December 17, 1990. How these regulations are to be administered is not yet clear since the BLM has different administrative and technical paths than the Forest Service

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PART 228—MINERALS

1. The authority citation for part 228 is revised to read as follows:

Authority: 30 Stat. 35 and 36, as amended (16 U.S.C. 478, 551); 41 Stat. 437, as amended, sec. 5102(d), 101 Stat. 1330-256 (30 U.S.C. 226); 61 Stat. 681, as amended (30 U.S.C. 601); 91 Stat. 914, as amended (30 U.S.C. 352); 69 Stat. 368, as amended (30 U.S.C. 611); and 94 Stat. 2400.

Subpart C—Disposal of Mineral Materials

2. Amend § 228.41 by adding new paragraphs (c), (d), and (e) to read as follows:

§ 228.41 Scope.

* * * * *

(c) *Mineral materials to which this subpart applies.* This subpart applies to mineral materials which consist of petrified wood and common varieties of sand, gravel, stone, pumice, pumicite, cinders, clay, and other similar materials. Such mineral materials include deposits which, although they have economic value, are used for agriculture, animal husbandry, building, abrasion, construction, landscaping, and similar uses. This subpart also applies to other materials which may not be minerals but are produced using mining methods, such as peat. The categories of these materials, including representative examples, are:

(1) *Agricultural supply and animal husbandry materials.* This category includes, but is not limited to, minerals and vegetative materials used as or for: Soil conditioners or amendments applied to physically alter soil properties such as direct applications to the soil of carbonate rocks, soil containing "trace elements" and peat; animal feed supplements; and other animal care products.

(2) *Building materials.* Except for minerals identified as *Uncommon Varieties*, this category includes, but is not limited to, minerals used as or for: Paint fillers or extenders; flagstone, ashlar, rubble, mortar, brick, tile, pipe, pottery, earthenware, stoneware, terrazzo, and other nonstructural components in floors, walls, roofs, fireplaces, and the like; and similar building uses.

(3) *Abrasive materials.* This category includes, but is not limited to, minerals used for: Filing; scouring; polishing; sanding; and sandblasting.

(4) *Construction materials.* This category includes, but is not limited to, minerals such as sand, gravel, clay, crushed rock and cinders used as or for fill; borrow; rip-rap; ballast (including all ballast for railroad use); road base; road surfacing; concrete aggregate; clay sealants; and similar construction uses.

(5) *Landscaping materials:* This category includes, but is not limited to minerals and peat used as or for: Chips, granules, sand, pebbles, scoria, cinders, cobbles, boulders, slabs, and other components in retaining walls, walkways, patios, yards, gardens, and the like; and similar landscaping uses.

(d) *Minerals not covered by this subpart.* Mineral materials do not include any mineral used in manufacturing, industrial processing, or chemical operations for which no other mineral can be substituted due to unique properties giving the particular mineral a distinct and special value; nor do they include block pumice which in nature occurs in pieces having one dimension of two inches or more which is valuable and used for some application that requires such dimensions. Disposal of minerals not covered by this subpart is subject to the terms of the United States Mining Laws, as amended (30 U.S.C. 22 *et seq.*), on those portions of the National Forest System where those laws apply. Such minerals may include:

(1) Mineral suitable and used as soil amendment because of a constituent element other than calcium or magnesium carbonate that chemically alters the soil;

(2) Limestone suitable and used, without substantial admixtures, for cement manufacture, metallurgy, production of quicklime, sugar refining, whiting, fillers, paper manufacture, and desulfurization of stack gases;

(3) Silica suitable and used for glass manufacture, production of metallic silicon, flux, and rock wool;

(4) Alumino-silicates or clays having exceptional qualities suitable and used for production of aluminum, ceramics, drilling mud, taconite binder, foundry castings, and other purposes for which common clays cannot be used;

(5) Gypsum suitable and used for wallboard, plaster, or cement.

(6) Block pumice which occurs in nature in pieces having one dimension of two inches or more and which is valuable and used for some application that requires such dimensions; and

(7) Stone recognized through marketing factors for its special and distinct properties of strength and durability making it suitable for structural support and used for that purpose.

(e) *Limitations on applicability.* (1) The provisions of paragraphs (c) and (d) of this section shall not apply to any mining claims for which a Mineral Entry Final Certificate was issued on or before January 16, 1991. Nor shall these provisions apply to any mining claim located on or before July 23, 1955, which has satisfied the marketability test for locatable minerals from on or before July 23, 1955, until the present date.

(2) A use which qualifies a mineral as an uncommon variety under paragraph (d) overrides classification of that mineral as a common variety under paragraph (c) of this section.

3. Amend § 228.42 by revising the definition of mineral materials to read as follows:

§ 228.42 Definitions.

* * * * *

Mineral materials. A collective term used throughout this subpart to describe petrified wood and common varieties of sand, gravel, stone, pumice, pumicite, cinders, clay, and other similar materials. Common varieties do not include deposits of those materials which are valuable because of some property giving them distinct and special value, nor do they include "so-called 'block pumice' " which occurs in nature in pieces having one dimension of two inches or more and which is valuable and used for some application that requires such dimensions.

4. Amend § 228.43 by adding new paragraphs (e) and (f) to read as follows:

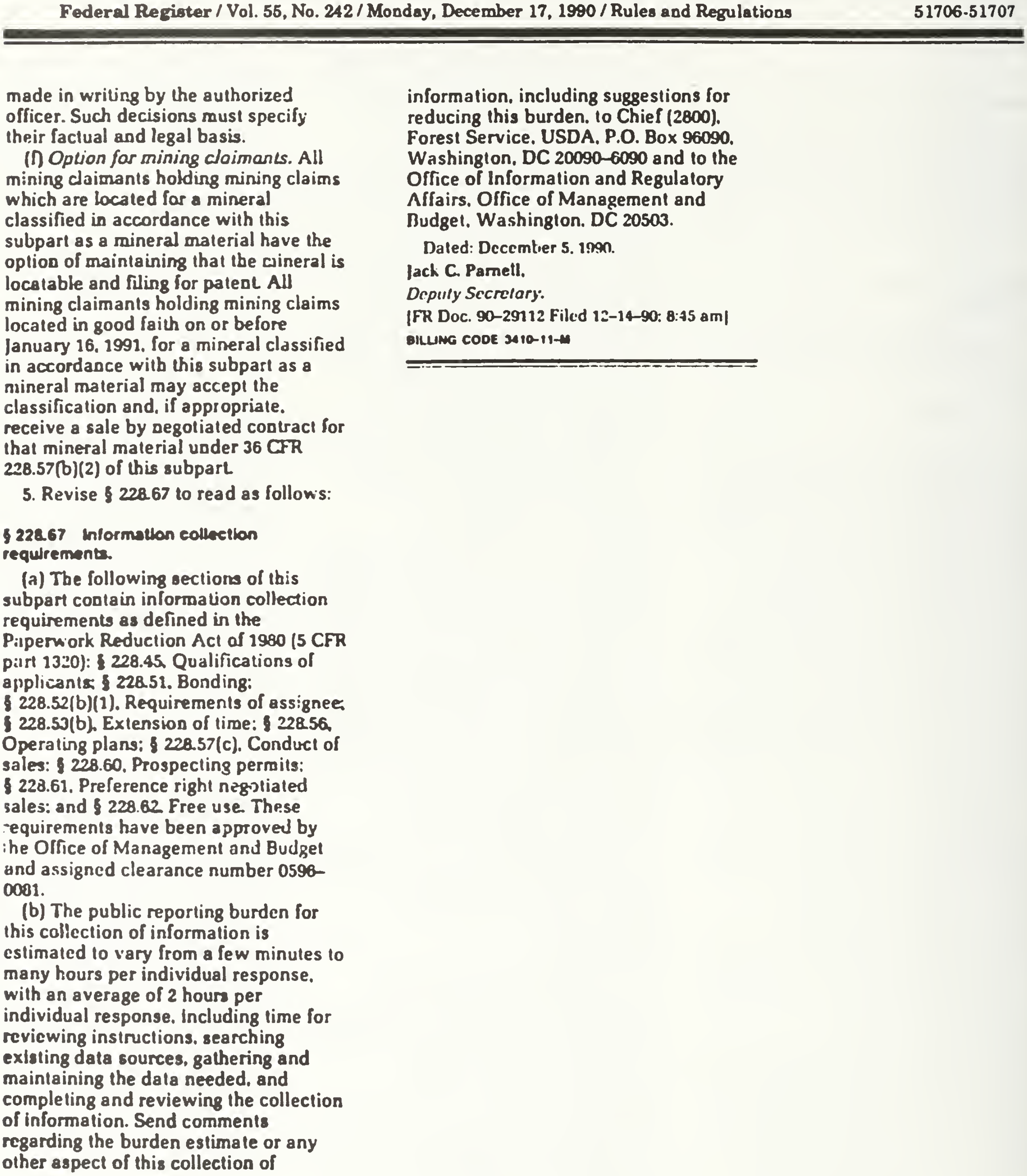
§ 228.43 Policy governing disposal.

* * * * *

(e) *Decisions.* All decisions as to whether or not to grant disposals proposed under this subpart shall be

NEW FOREST SERVICE REGULATIONS REGARDING DISPOSAL OF MINERAL MATERIALS (36 CFR 228).

Note: The following regulations regarding common variety materials were issued on December 17, 1990. How these regulations are to be administered is not yet clear since the BLM has different administrative and technical paths than the Forest Service (see p. 3-5 of book text).



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made in writing by the authorized officer. Such decisions must specify their factual and legal basis.

(f) *Option for mining claimants.* All mining claimants holding mining claims which are located for a mineral classified in accordance with this subpart as a mineral material have the option of maintaining that the mineral is locatable and filing for patent. All mining claimants holding mining claims located in good faith on or before January 16, 1991, for a mineral classified in accordance with this subpart as a mineral material may accept the classification and, if appropriate, receive a sale by negotiated contract for that mineral material under 36 CFR 228.57(b)(2) of this subpart.

5. Revise § 228.67 to read as follows:

§ 228.67 Information collection requirements.

(a) The following sections of this subpart contain information collection requirements as defined in the Paperwork Reduction Act of 1980 (5 CFR part 1320): § 228.45, Qualifications of applicants; § 228.51, Bonding; § 228.52(b)(1), Requirements of assignee; § 228.53(b), Extension of time; § 228.56, Operating plans; § 228.57(c), Conduct of sales; § 228.60, Prospecting permits; § 228.61, Preference right negotiated sales; and § 228.62, Free use. These requirements have been approved by the Office of Management and Budget and assigned clearance number 0596-0081.

(b) The public reporting burden for this collection of information is estimated to vary from a few minutes to many hours per individual response, with an average of 2 hours per individual response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief (2800), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Dated: December 5, 1990.

Jack C. Parnell,

Deputy Secretary.

[FR Doc. 90-29112 Filed 12-14-90; 8:45 am]

BILLING CODE 3410-11-M

ATTACHMENTS

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D. C. 20240

June 4, 1998

In Reply Refer To:
3860/3890/3895 (320)N
Affects MS 3980

EMS TRANSMISSION 6/8/98
Instruction Memorandum **No. 98-118**
Expires: 09/30/99

To: All State Directors and D-NTC

From: Assistant Director, Minerals, Realty & Resource Protection

Subject: Mineral Examinations of Grandfathered Mineral Patent Applications; Dates for Determining Compliance With the Prudent Man Rule and Marketability Test

Background:

In the last five years, the Department has defended a series of lawsuits concerning mineral patent applications. Key to the Department's position has been the long standing principle that the Secretary has the right to inquire into the validity of mining claims at any time up to the day of patenting. See Independence Mining Co. v. Babbitt, 105 F. 3d 502 (9th Cir. 1997); R. T. Vanderbilt Co. v. Babbitt, 113 F. 3d 1061 (9th Cir. 1997); Mt. Emmons Mining Co. v. Babbitt, 117 F. 3d 1167 (10th Cir. 1997) and Swanson v. Babbitt ; 3 F. 3d 1348 (9th Cir. 1993). In these decisions, the courts have agreed with the Department's position that an applicant's right to a patent does not vest until the Secretary determines that the applicant has complied fully with the patenting requirements of the mining law.

In the process of determining whether an applicant has complied fully with the patenting requirements, the Bureau of Land Management (BLM) must verify whether the claimant has discovered a valuable mineral deposit. For mill sites, BLM must verify whether the applicant has complied with all acreage, use, and occupancy requirements. BLM's mineral examiners make this verification by reviewing the data submitted by the applicant, by examining the mining claims and mill sites on the ground, and by requesting supplemental information from the applicant, if necessary. After verifying that a discovery of a mineral deposit exists on the mining claims in question, the mineral examiner must determine whether the discovery is valuable by analyzing the market for that mineral, and determining the economics of the mine scenario as of a given date. For mill sites, the examiner must determine whether the land is being used or occupied as of a given date. This instruction memorandum serves to provide guidance to mineral examiners regarding the dates to be used for making these determinations In contest proceedings, the Office of Hearings and Appeals (OHA) continues to apply U. S. v. Norman Whittaker (On Reconsideration), 102 IBLA 162 (1988), when determining whether a mining claim or mill site is valid for purposes of patenting. In Whittaker, the Interior Board of Land Appeals (IBLA) concluded that marketability must be determined as of the date of the first half of the mineral entry final certificate (FHFC) because IBLA views the FHFC date as the date on which equitable title vests in the patent applicant. The court of appeals decisions cited above do not agree with that view. The decisions conclude that equitable title does not vest until the Secretary determines that the applicant has met all the requirements for patenting. The Secretary does not make a final determination until after a mineral examination and report are completed and reviewed. Although the court of appeals decisions are at odds with the Whittaker decision, mineral examiners must continue to determine whether mining claims contain a discovery of a valuable mineral deposit and whether mill sites are being properly used and occupied as of the date of the FHFC because of OHA's continuing application of the Whittaker decision to patent application contest proceedings.

Since the FHFC does not necessarily represent the date on which an applicant has met all patenting requirements under the Mining Law, mineral examiners must also determine mining claim and mill site validity as of the date of the mineral examination. In order to get a patent, a claimant must file a patent application which "shows compliance" with the requirements of the mining law. 30 U.S.C. § 29. If the mineral examiner finds that the applicant has not submitted enough information to show that he or she has discovered a valuable mineral deposit on the mining claims in question or is properly using and occupying the mill sites, the mineral examiner may request additional data and information from the applicant. In such cases, the applicant has not complied fully with the patenting requirements of the Mining Law until after he or she has submitted the additional necessary information. Consequently, the mineral examiner must determine whether mining claims contain a discovery of a valuable mineral deposit and whether mill sites are being properly used and occupied as of the date of the mineral examination. However, if the mineral examiner requests additional information that is critical to determining the applicant's compliance with the Mining Law, the examiner should document the date and nature of the request in the mineral report and identify the information the applicant submits in response to the examiner's request and the date it was received. This final date of receipt will, in all likelihood, be the date the applicant has complied fully with the patenting requirements of the Mining Law and, if all else is regular, will also become the date of marketability for analysis in the report.

Policy:

Absent a withdrawal of the land from mineral entry, the BLM mineral examiner must determine whether the mining claims are supported by a discovery and mill sites are properly used or occupied under the mining law as of two points in time. The first date is the date of the FHFC as specified in the Whittaker case. The second date is the date of the mineral examination or, if more information is required of the applicant after the mineral examination the date of receipt of the information requested by the mineral examiner. Other than establishing the dates of 3 marketability to be used in the mineral examination and report, nothing in this memorandum changes our technical standards and technical criteria for conducting mineral examinations and preparing the required mineral report.

Timeframe: Immediate.

Budget Implications: None.

Coordination: Usual Channels.

Contact: Roger Haskins, Senior Specialist for Mining Law Adjudication and CRME No. 003, Solids Group at (202)-452-0355.

Signed by:
Robert M. Anderson
Acting Assistant Director
Minerals, Realty & Resource Protection

Authenticated by:
Robert M. Williams
Directives, Records
& Internet Group,WO540

Directive forwarded to SD, CA-920 and cc to: AFOs on 6/9/98

United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO

MAY 22 1998

MEMORANDUM

To: Director, Bureau of Land Management

From: Solicitor

Subject: Patenting of Mining Claims and Mill Sites in Wilderness Areas

I. Introduction

My office is reviewing a number of mineral patent applications[1] filed for lands within the National Wilderness Preservation System.[2] A question has been raised whether the Bureau of Land Management's (BLM) recommendations to patent the lands without a reservation of the surface estate comply with section 4(d)(3) of the Wilderness Act of 1964, 16 U.S.C. § 1133(d)(3) (1994).[3]

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[1] A mineral patent is a deed that conveys title to federal land or interests in land to the patentee.

[2] The National Wilderness Preservation System includes lands managed by the Forest Service (National Forest System lands), Bureau of Land Management (BLM) (public lands), Fish and Wildlife Service (lands in National Wildlife Refuges), and National Park Service (National Park System lands), that Congress has designated as wilderness areas. BLM is responsible for administering the patenting provisions of the Mining Law of 1872, 30 U.S.C. §§ 22 et seq., even on lands managed by other agencies.

[3] BLM conducts a mineral examination and prepares a mineral report on lands for which a patent is sought. The report recommends qualified claims for patenting and recommends initiating a mineral contest against unqualified claims. Lands recommended for patenting are described in a patent document prepared by BLM, which contains any title restrictions or exclusions, such as the reservation to the United States of the surface estate under section 4(d)(3) of the Wilderness Act.

Section 4(d)(3) of the Wilderness Act, which became law on September 3, 1964, allowed the Mining Law of 1872, 30 U.S.C. §§ 22 et seq. (1994), to continue to operate until midnight December 31, 1983, albeit subject to some regulation, on "those national forest lands designated by this chapter as 'wilderness areas.'"[4] 16 U.S.C. § 1133(d)(3). Thereafter, except for "valid rights then existing," the "minerals in lands designated by this chapter as wilderness areas are withdrawn from all forms of appropriation under the mining laws." Id. Section 4(d)(3) provides:

> Mining locations lying within the boundaries of said [national forest] wilderness areas shall be held and used solely for mining or processing operations and uses reasonably incident thereto; and hereafter, subject to valid existing rights, all patents issued under the mining laws of the United States affecting national forest lands designated by this chapter as wilderness areas shall convey title to the mineral deposits within the claim, . . . but each such patent shall reserve to the United States all title in or to the surface of the lands and products thereof, and no use of the surface of the claim or the resources therefrom not reasonably required for carrying on mining or prospecting shall be allowed except as otherwise expressly provided in this chapter: Provided, That, unless hereafter specifically authorized, no patent within wilderness areas designated by this chapter shall issue after December 31, 1983, except for the valid claims existing

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[4] Although section 4(d)(3) references "national forest lands" designated as wilderness, it also applies to BLM-managed wilderness lands under section 603(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(c) (1994) ("Once an area [of BLM-managed public lands] has been designated for preservation as wilderness, the provisions of the Wilderness Act which apply to national forest wilderness areas shall apply with respect to the administration and use of such designated area[.]"). Furthermore, statutes designating land managed by the National Park Service or the Fish and Wildlife Service as wilderness often incorporate "applicable" provisions of the Wilderness Act, which may include, if relevant, provisions dealing with minerals such as section 4(d)(3). See, e.g., Alaska National Interest Lands Conservation Act § 707, Pub. L. No. 96-487, 94 Stat. 2371, 2421 (1980) ("Except as otherwise expressly provided for in this Act wilderness designated by this Act shall be administered in accordance with applicable provisions of the Wilderness Act governing areas designated by that Act as wilderness, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act, and any reference to the Secretary of Agriculture for areas designated in sections 701 and 702 shall, as applicable, be deemed to be a reference to the Secretary of the Interior."); Act of Oct. 20, 1976, Pub. L. No. 94-567, 90 Stat. 2692 (1976) (National Park System lands designated by the Act as wilderness "shall be administered by the Secretary of the Interior in accordance with the applicable provisions of the Wilderness Act"); Act of Oct. 19, 1976 § 6, Pub. L. No. 94-557, 90 Stat. 2633, 2638 (1976) (National Wildlife Refuge lands designated by the Act as wilderness "shall be administered in accordance with the applicable provisions of the Wilderness Act").

> on or before December 31, 1983. Mining claims located after September 3, 1964 within the boundaries of wilderness areas designated by this chapter shall create no rights in excess of those rights which may be patented under the provisions of this subsection.

Id. (emphasis added).

Section 4(d)(3) limits patenting in wilderness areas in two ways. First, it restricts all patents in a designated wilderness area to the mineral deposits within the claim, with the United States reserving the surface estate, "subject to valid existing rights." Second, it cuts off all patenting—of the mineral deposits as well as the surface estate—in designated wilderness areas after December 31, 1983, "except for the valid claims existing on or before [that date]."[5]

This Opinion deals with the first of these limitations, the one restricting patenting in wilderness areas to the mineral deposits, "subject to valid existing rights." Specifically, it addresses exactly when a claimant has established a valid existing right to patent both the surface estate and mineral deposits or, conversely, when a claimant may patent only the mineral deposits in the claim.

In answering this question, mining claims may be divided into three categories. The first consists of claims where the claimant has properly located a mining claim, made a discovery of a valuable mineral deposit, filed a patent application, and established a right to a patent before the land in question was designated as wilderness. The second consists of claims where the claimant properly located a mining claim and made a discovery of a valuable mineral deposit before the land in question was designated as wilderness, but for which the claimant had not established a right to a patent before the land was designated as wilderness. The third consists of claims upon which no discovery was made or which were not otherwise properly located until after the wilderness designation.[6]

Under section 4(d)(3)'s plain language, claims in the first category may be patented without a reservation of the surface estate because the claimant established a valid existing right to an unrestricted patent under section 4(d)(3) prior to the wilderness designation. The statutory language is likewise clear that only the mineral deposits may be patented for the third group of claims. The issue addressed in this Opinion is whether the second category of claims should be patented without a reservation of the surface estate.

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[5] For claims not located or not valid as of midnight December 31, 1983, the plain terms of section 4(d)(3) forbid patenting altogether. 16 U.S.C. § 1133(d)(3) ("[N]o patent within wilderness areas . . . shall issue after December 31, 1983, except for the valid claims existing on or before December 31, 1983.").

[6] For lands designated as wilderness before January 1, 1984, claims could still be located until that date. For lands designated as wilderness after January 1, 1984, claims could only be located until the date of wilderness designation.

BLM currently recommends that claims in this category be patented in full fee simple, without a reservation of the surface estate. We also understand that prior to the Secretary's revocation of BLM's authority to issue patents in 1993,[7] BLM regularly issued patents without a surface estate reservation for such claims. We have found no record of the Solicitor's Office ever addressing whether this practice is consistent with section 4(d)(3); that is, as far as we have been able to determine, the issue being addressed here is one of first impression in the Solicitor's Office, having arisen out of our participation in the Secretarial review of patent applications. See Mt. Emmons Mining Co. v. Babbitt, 117 F.3d 1167, 1168 (10th Cir. 1997) (discussing the history and implementation of the Secretary's 1993 order on patenting).

For the reasons that follow, I conclude that the Wilderness Act disallows patenting of the surface estate for mining claims located prior to a wilderness designation where the claimant had not established a "valid existing right" to a full fee simple patent as of the date of the wilderness designation. Such a right, I believe, is perfected only when the claimant files a patent application and complies with all the requirements for obtaining a patent under the Mining Law, as determined by the Secretary.[8] As explained more fully below, this conclusion should serve Congress's purpose in enacting the Wilderness Act, but have little, if any, practical impact on claimants' mining activities in designated wilderness areas.

II. The Text and Purpose of the Wilderness Act

The purpose of the Wilderness Act is expressed in the statutory text:

> In order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition, it is hereby declared to be the policy of the Congress to secure for the

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[7] See Secretarial Order No. 3163 (Mar. 2, 1993).

[8] The analysis of whether a claimant has established a right to a patent is distinct from whether, in a mandamus action, the Secretary has a duty to issue a patent. A duty to issue a patent does not arise until the Secretary makes an official determination that all conditions for issuance of a patent have occurred. See Marathon Oil Co. v. Lujan, 937 F.2d 498, 501 (10th Cir 1991). The Secretarial review process, by which the patent application proceeds through review by the chain of command, generally results in the Secretary's determination occurring later than the date at which a claimant establishes a right to a patent.

> American people of present and future generations the benefits of an enduring resource of wilderness.

16 U.S.C. § 1131(a). The same section goes on to define wilderness in terms unusually eloquent for a mere statute:

> A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

Id. § 1131(c).

According to the House Committee on Interior and Insular Affairs, the congressional policy was to maintain "the undeveloped character of their lands and the need to protect and manage them in order to preserve, as far as possible, the natural conditions that now prevail." National Wilderness Preservation System, H.R. Rep. No. 88-1538, at 7 (1964), reprinted in 1964 U.S.C.C.A.N. 3615, 3615-16. Despite this burst of enthusiasm for the protection of natural, "untrammeled" conditions, political reality required Congress to address, and to some extent allow, continued mineral activity in designated wilderness areas. That compromise was embodied primarily in section 4(d)(3), with which we are here concerned. Nevertheless, the fundamental thrust of the statute, to protect and maintain the natural character of designated wilderness areas, argues for a narrow interpretation of the valid existing rights language in section 4(d)(3).

Turning specifically to that section, its first patenting limitation requires "all patents" in designated wilderness areas issued after September 3, 1964 (the date of enactment), to reserve the surface estate to the United States, "subject to valid existing rights." Because this limiting language addresses only patenting, the phrase "valid existing rights" must refer only to a claimant's valid existing rights to a patent without a reservation to the United States of the surface estate.

Valid existing rights to a patent should be contrasted with the broader concept of valid existing rights in an unpatented mining claim. That Congress appreciated the significance of this distinction is demonstrated in section 4(d)(3) itself. In contrast to the earlier reference to a valid existing right to a patent, the second patenting limitation of section 4(d)(3), which prohibits all patenting within designated wilderness areas after December 31, 1983, specifically excepts "valid claims existing on or before" that date, rather than valid rights.[9] This means that the valid existing rights exception in the first patenting restriction of section 4(d)(3) is not referring to a valid existing right to an unpatented mining claim, but rather a valid existing right to an unrestricted patent if so established by the claimant prior to the wilderness designation. The fact that Congress chose to frame the exemption from the patenting restriction in the first part of section 4(d)(3) as "valid existing rights," as opposed to "valid claims existing on or before" the date of withdrawal, may be said to reflect a congressional appreciation of the difference between the two phrases and a knowing intention not to allow every valid claim existing prior to a wilderness designation to be patented without a surface reservation to the United States.

It has long been acknowledged that a valid, unpatented mining claim gives the claimant a possessory interest in the land and the right to develop the claim within applicable regulations so long as the claimant continues to satisfy the requirements of the mining laws. See United States v. Locke, 471 U.S. 84 (1985); Chambers v. Harrington, 111 U.S. 350 (1884). This right arises when a claimant properly locates a mining claim and discovers a valuable mineral deposit on lands open to location in compliance with the mining laws. This core right conveyed under the Mining Law—the right to develop the valuable mineral deposits discovered on the claim—is not the same as the right to a patent. See Erhardt v. Boaro, 113 U.S. 527, 535 (1885).

Whether the holder of a valid mining claim may develop minerals found within the claim does not depend upon whether the claimant has a patent, whether to the minerals only, or to the surface estate as well. This is true both within and outside of designated wilderness areas. Nothing in the Mining Law requires claimants to patent their claims. Historically, thousands of producing mines have been brought into production on unpatented claims; today, several hundred producing mines are found at least partially on unpatented claims. See, e.g., Chambers, 111 U.S. at 353 ("[T]he patent adds little to the security of the party in continuous possession of a mine he has discovered or bought."); Independence Mining Co. v. Babbitt, 105 F.3d 502, 509 (9th Cir. 1997) (stating that the mining company "need not obtain patents to continue its mining operations"). In short, nothing in the language of section 4(d)(3), which requires a reservation of the surface estate to the United States in a patent issued after a wilderness designation, affects a claimant's ability to continue to develop the valuable minerals on a preexisting unpatented mining claim, so long as a valid claim had been established as of the time the land was withdrawn from further appropriation under the mining laws (January 1, 1984, with respect to lands designated as wilderness before that date). Cf. Locke, 471 U.S. at 107 ("Regulation of property rights does not 'take' private property when an individual's reasonable, investment-backed expectations can continue to be realized as long as he complies with reasonable regulatory restrictions the legislature has imposed."). By receiving a patent to the mineral deposits only, a claimant does not lose the right to use so much of the surface of the mining claim as is necessary for mining, milling, or processing operations or uses reasonably incident thereto. See Surface Resources Act of 1955 § 4, 30 U.S.C. § 612(b) (1994).

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[9] Thus a claimant with an otherwise valid claim on or before December 31, 1983, could proceed to patent for that claim. That patent should, however, for the reasons explained in this memorandum, be limited to the mineral deposits unless the claimant also had established a "valid existing right" to a patent to the surface as of the time of the wilderness designation.

While patenting has little, if any, practical import for mining activity, patenting of the surface as well as the mineral estate does create a fee simple inholding in a wilderness area, and it enlarges the possible range of activities that may properly be conducted on that land. That is, prior to patenting the surface, the only activities authorized on the claim would be mineral activities and uses reasonably incident thereto. This limitation is strongly implied in the Mining Law. See, e.g., Andrus v. Charlestone Stone Prods. Co., 436 U.S. 604, 611 (1978) ("[T]he federal mining law surely was not intended to be a general real estate law[.]"). More significantly, it is twice expressly set out in section 4(d)(3) itself: "Mining locations lying within the boundaries of said wilderness areas shall be held and used solely for mining or processing operations and uses reasonably incident thereto"; and again, "no use of the surface of the claim or the resources therefrom not reasonably required for carrying on mining or prospecting shall be allowed except as otherwise expressly provided in this chapter[.]" 16 U.S.C. § 1133(d)(3).

Once the surface of a claim in a wilderness area is patented, this limitation disappears and the claim is converted to a fee simple inholding in the wilderness area. As such, absent other limitations imposed by federal, state or local law, the surface can be used for homesites, ski areas or other recreational developments, or many other uses that could conflict with the purposes of the wilderness designation attaching to the surrounding federal land. This effect strongly suggests that if the patent limitation in section 4(d)(3) were to be read to maximize protection of wilderness, any exemption from it should be read narrowly. The protective thrust of the Wilderness Act, in other words, counsels being cautiously tightfisted about issuing patents to the surface estate in wilderness areas.

III. The Legislative History of the Wilderness Act

The Wilderness Act took an eight-year journey through Congress. See Michael McCloskey, The Wilderness Act of 1964: Its Background and Meaning, 45 Or. L. Rev. 288, 298-301 (1966). Most of the discussion of mining issues in the legislative history of the Wilderness Act focused on mineral leasing and prospecting. See Hearings Before the Comm. on Interior and Insular Affairs on S. 4, 88th Cong. (1963); 110 Cong. Rec. 17,427, 17,429, 17,434, 17,441, 17,446, 17,448 (1964) (debating H.R. 9070); 110 Cong. Rec. 20,601 (1964) (debating S. 4); 109 Cong. Rec. 5922, 5923-28 (1963) (debating S. 4); 109 Cong. Rec. 5885, 5897-98 (1963) (debating

S. 4). As originally introduced in the Congress that finally passed the Wilderness Act, neither the Senate nor the House bills included anything about patenting.[10]

The bill reported out of the House Committee included the text of what became section 4(d)(3).[11]. The House Committee Report explained the purpose of restricting patents in wilderness areas to the mineral deposits only, subject to "valid existing rights," as being a means "to effect maximum wilderness preservation." H.R. Rep. No. 88-1538, at 9, reprinted in 1964 U.S.C.C.A.N. 3615, 3618. Regarding the reach of that restriction, the House Committee Report tersely expressed the understanding that it would apply to "locators of claims staked after the effective date of the act." Id. at 9-10, 1964 U.S.C.C.A.N. 3615, 3618.

This understanding in the House Committee Report is apparently based upon a letter, included in the report, from John A. Carver, Jr., Assistant Secretary of the Interior, to Wayne N. Aspinall, Chairman, Committee on Interior and Insular Affairs, dated December 12, 1963. Id. at 15-17, reprinted in 1964 U.S.C.C.A.N. 3615, 3623-25 [hereinafter Carver letter]. The Carver letter expressed the Department of the Interior's strong support for the bill, and appended suggestions for nine "technical and perfecting amendments, which we believe are desirable to remove ambiguities." Id. at 15, reprinted in 1964 U.S.C.C.A.N. 3615, 3623. One of these was to add the words "subject to valid existing rights" to the section 4(d)(3) patenting provision. Id. at 16-17, reprinted in 1964 U.S.C.C.A.N. 3615, 3624-25. The letter explained the purpose this way:

> The requirement of the bill that all patents issued after the effective date of this act shall convey title to mineral deposits with a reservation to the United States of all title to the surface of the lands must be subject to "valid existing rights". The owner of a valid mining claim perfected under

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[10] Section 6(c)(2) of the Senate bill simply allowed the President to authorize prospecting and mining "upon his determination that such use or uses" in a specific area "will better serve the interests of the United States and the people thereof than will its denial." S. 4, 88th Cong. § 6(c)(2) (1963). Section 4(d)(2) of the House bill authorized only prospecting and mineral surveys, while section 5(b) allowed access to valid mining claims wholly within a wilderness area subject to "reasonable regulations consistent with the preservation of the area as wilderness." H.R. 9070, 88th Cong. §§ 4(d)(2), 5(b) (1963).

[11] The only significant differences between the language of the bill reported out of the House Committee and section 4(d)(3) as enacted were the date of the patenting cutoff in wilderness areas and the date of withdrawal under the mining laws. The House Committee version stated that no patents "shall issue after December 31, 1989, except for the valid claims existing on or before December 31, 1989." H.R. Rep. No. 88-1538, at 5 (emphasis added). The House Committee version of the bill also withdrew the minerals in wilderness areas from appropriation under the mining laws, "effective January 1, 1990." Id. (emphasis added). Section 4(d)(3), as enacted, sets the patenting cut-off date at December 31, 1983, and the withdrawal date as January 1, 1984. 16 U.S.C. § 1133(d)(3).

> the mining laws prior to the effective date of this act has already acquired a possessory title to the surface of the land and any patent issued on such a claim after the effective date of this act must convey title to both the land and mineral deposits therein, unless provision is made for just compensation. See Solicitor's Opinion, M-36467 (August 28, 1957).

Id. at 17, reprinted in 1964 U.S.C.C.A.N. 3615, 3625. The first quoted sentence reflects a legitimate concern that the proposed Act's restrictions on patenting ought to be carried out in such a way as to avoid extinguishing vested property rights for which just compensation would be required. It also suggests a specific response to that concern—one that was subsequently included in the legislation—to make the restrictions "subject to valid existing rights."

The second quoted sentence of the Carver letter sets out a view of what kinds of rights would be protected by the addition of that qualifying phrase "subject to valid existing rights"— namely, the right of the holder of a valid mining claim in an area designated as wilderness to obtain a patent to the surface as well as the mineral deposits. Carver describes the claims which establish this right as both "valid" and "perfected." It is not clear whether Carver understood these terms to be synonymous (and therefore redundant) or whether he thought a "perfected" claim was something more than a "valid" claim. Since mining claims must contain a discovery of a valuable mineral deposit to be considered valid, it is possible that Carver's additional use of the term "perfected" to describe the qualifying claims meant instead that the claims had been "perfected" by complying with all the requirements for filing a complete patent application and establishing a right to a patent, as determined by the Secretary. This reading eliminates the redundancy and makes Carver's position consistent with the case law discussed below and the conclusions in this Opinion.

If, however, Carver thought that owners of valid mining claims have, without more, vested rights to a patent including the surface as well as the mineral deposits, his viewpoint is less persuasive. The only authority cited for that proposition in his letter does not support such a conclusion. The referenced Solicitor's Opinion, entitled Disposal of Sand and Gravel from Unpatented Mining Claims, M-36467, at 2 (Aug. 28, 1957), analyzes the respective rights of mining claimants and BLM to dispose of sand and gravel from unpatented mining claims. It does not address or cast doubt on the authority of Congress to impose statutory restrictions on patenting, such as the surface estate reservation, or to cut off patenting entirely, for valid existing unpatented mining claims.

As explained more fully below, court decisions over the past two decades have demonstrated that valid mining claims, without more, do not include a valid existing right to a patent under the Mining Law. Until a right to a patent is established, there is, contrary to what the Assistant Secretary's letter might indicate, no "valid existing right" to a mineral patent to the surface estate—nor, indeed, to the mineral estate.

The question is what, if any, weight should be given to the Carver letter and the terse statement in the House Committee Report. Plainly, the House Committee embraced Carver's concern about the need to protect "valid existing rights," and accordingly added that language to section 4(d)(3). But the drafters of the House Committee Report also implied in the report language quoted above, that the phrase protected all claims "staked" prior to enactment, whether or not the claims were "valid" or "perfected" prior to enactment, as one interpretation of the Carver letter might indicate.

The suggestions offered in both the Carver letter and the House Committee Report describing what the phrase "valid existing rights" might mean in this context should not, in my view, be regarded as enacting into law a particular view of valid existing rights. Instead, by using such a general, common phrase,[12] Congress was leaving it ultimately up to the courts to determine what "valid existing rights" meant in the patenting context. Moreover, the House Committee Report in effect counseled the courts to construe the pertinent language to "effect maximum wilderness preservation," because that was the thrust of the patent limitation to "mineral deposits alone, with only such use of the surface as may reasonably be required in connection with the mining operation." See H.R. Rep. No. 88-1538, at 9, reprinted in 1964 U.S.C.C.A.N. 3615, 3618. In short, in light of the subsequent case law described below, Congress's inclusion of the valid existing rights provision in section 4(d)(3) is best viewed as responsive to the general constitutional concern the Assistant Secretary raised, rather than as legislating any precise understanding of the scope of those rights.

IV. Modern Judicial Treatment of Valid Existing Rights with Respect to Legislation Affecting Mining Claims and Patents

Any doubt that may have lingered as to the power of Congress to restrict the opportunity to obtain a patent or limit its scope, as Congress has done in section 4(d)(3), was erased by the Supreme Court's decision in United States v. Locke, 471 U.S. 84 (1985). There the Court rejected a challenge to Congress's authority to condition the holding of a mining claim on the claimant's filing, "prior to December 31" every year, a notice of intent to hold the claim or proof of assessment work performed as required by section 314 of the Federal Land Policy and Management Act (FLPMA). Id. at 88-90 (discussing the requirements under FLPMA § 314, 43 U.S.C. § 1744 (1994)). The challenge was mounted by a hapless claimant who had filed one day late, on December 31. Id. at 90. The Court's discussion of Congress's power to limit the scope of even vested property rights in mining claims is fully applicable here:

> Even with respect to vested property rights, a legislature generally has the power to impose new regulatory constraints on the way in which those rights are used, or to condition their continued retention on performance of certain affirmative duties. As long as the constraint or duty imposed is a

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[12] For examples of other statutes using the phrase "subject to valid existing rights" see note 13, infra.

> reasonable restriction designed to further legitimate legislative objectives, the legislature acts within its powers in imposing such new constraints or duties. . . .
>
> This power to qualify existing property rights is particularly broad with respect to the "character" of the property rights at issue here. Although owners of unpatented mining claims hold fully recognized possessory interests in their claims, we have recognized that these interests are a "unique form of property." . . . The United States, as owner of the underlying fee title to the public domain, maintains broad powers over the terms and conditions upon which the public lands can be used, leased, and acquired. See, e.g., Kleppe v. New Mexico, 426 U.S. 529, 539 (1976). . . . Claimants thus must take their mineral interests with the knowledge that the Government retains substantial regulatory power over those interests.

Id. at 104-05 (citations omitted). Reflecting such teachings, federal appellate courts in the past two decades have issued a number of decisions rejecting "vested rights" challenges by holders of mining claims to subsequently-imposed legislative restrictions on mineral patenting. None of these decisions has construed section 4(d)(3) of the Wilderness Act, apparently because BLM's practice has been not to reserve the surface of patents in wilderness areas if the claim was valid at the time of the wilderness designation. Rather, these court decisions arise out of other laws enacted by Congress that have cut off or restricted patenting on designated lands in a manner similar to (or more restrictively than) the Wilderness Act provisions.[13]

The first of these cases addressed that part of a statute establishing the Sawtooth National Recreation Area which flatly abolished patenting in the area in question. The statute was unequivocal: "Patents shall not hereafter be issued for locations and claims heretofore made in the recreation area under the mining laws of the United States." Sawtooth National Recreation

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[13] Many statutes withdrawing lands for, among other things, parks, recreation or conservation areas, monuments, and wild and scenic rivers areas, curtail or restrict patenting, but make a provision for valid existing rights. See, e.g., Wild and Scenic Rivers Act § 6, 16 U.S.C. § 1280 (restricting patenting in designated areas to the mineral deposits, subject to valid existing rights); California Desert Protection Act of 1994, § 508, 16 U.S.C.A. § 410aaa-48 (West Supp. 1997) (requiring patents in the Mojave National Preserve to "convey title only to the minerals" subject to valid existing rights). A few statutes withdrawing lands and restricting patenting do not make provision for valid existing rights. See, e.g., Sawtooth National Recreation Area Act § 12, 16 U.S.C. § 460aa-11 (1994) (disallowing patenting for existing and future claims); Jemez National Recreation Area Act § 3, 16 U.S.C. § 460jjj-2 (a)(1) (1994) (cutting off all patenting for any claims made in the recreation area); Los Padres Condor Range and River Protection Act, Pub. L. No. 102-301, § 8, 106 Stat. 242 (1992) (restricting patents issued after the withdrawal to the mineral deposits only).

Area Act (Sawtooth Act) § 12, 16 U.S.C. § 460aa-11 (1994).[14] In Freese v. United States, 639 F.2d 754 (Ct. Cl.), cert. denied, 454 U.S. 827 (1981), the U.S. Court of Claims held that a mining claimant with valid but unpatented mining claims had no right to receive a patent for lands withdrawn from location and patenting under the Sawtooth Act. The court held that the Sawtooth Act did not disturb the plaintiff's "valid existing rights" in his mining claims because his "rights of use, enjoyment and disposition in his unpatented mining claims remain undiminished." Id. at 758 (emphasis added). The court noted that the plaintiff "had not yet taken the first step towards obtaining patents upon any of his mining claims when the Sawtooth Act intervened[,]" and concluded that he had no right to be given the "opportunity to obtain greater property than that which he owned" at the time of the withdrawal. Id.

In describing the impact of the Sawtooth Act's patenting prohibition on the House floor, the Chair of the House Committee, Rep. Wayne Aspinall, had expressed the view that

> any person holding a valid claim is entitled to proceed to patent and thereby acquire fee title to the lands involved. Section [460aa-11], in effect, extinguishes that right with respect to lands located within the recreation area. While this probably creates a right to some compensation, its value may not be too significant since the right to prospect, develop, and mine the claim is protected by the terms of the bill. In short, Mr. Chairman, the committee has attempted to protect this area without unjustly or unlawfully depriving any person of an established property right.

118 Cong. Rec. 1255, 1256 (1972) (statement of Rep. Wayne N. Aspinall) (emphasis added). In Freese, the Court of Claims in effect rejected Chairman Aspinall's suggestion that extinguishing a patent opportunity for holders of valid claims "probably creates a right to some compensation." In answering Freese's argument that "his right to the issuance of a patent upon each of his mining claims vested as soon as he completed the discovery [of a valuable mineral deposit] and location of each claim," the court explained that "[t]he law is well-settled that this vested right does not arise until there has been full compliance with the extensive procedures set forth in the federal mining laws for the obtaining of a patent." Freese, 639 F.2d at 758. The court concluded that a

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[14] Section 10 of the Sawtooth Act contained a "valid existing rights" provision for mining claims, as follows: "Subject to valid existing rights, all Federal lands located in the recreation area are hereby withdrawn from all forms of location, entry, and patent under the mining laws of the United States." 16 U.S.C. § 460aa-9 (1994). The Conference Report on the bill clearly reflected the understanding that the flat abolition of patenting in section 12, without provision for valid existing rights, left no room for suggesting that the section 10 valid existing rights provision applied to the patent abolition. That is, without mentioning valid existing rights, the report expressed "approval of the provision prohibiting the issuance of patents on existing claims." Sawtooth National Recreation Area, H.R. Rep. No. 92-1276, at 9 (1972), reprinted in 1972 U.S.C.C.A.N. 3013, 3047.

claimant suffers no unconstitutional divestment of a property right solely because it no longer has the option to apply for patents to its claims. Id.

The court recognized the differing impacts of the section 12 patenting prohibition and the section 10 withdrawal from location subject to "valid existing rights." See supra note 14. It stated that, "while the right of possession and enjoyment attaching to valid claims existing upon the effective date of the Act is expressly recognized and preserved, the ability to obtain patents upon these claims is expressly denied." Freese, 639 F.2d at 756-57.

The next court decision came in a lawsuit brought by holders of valid mining claims in Alaska on federal land that was conveyed to Native corporations under the terms of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. §§ 1601 et seq. (1994). Under section 22(c) of ANCSA, mining claimants had five years to "proceed to patent" on such lands,[15] but the plaintiffs missed the deadline. They argued that they had a valid existing right to a patent that could not be cut off by legislation. In Alaska Miners v. Andrus, 662 F.2d 577 (9th Cir. 1981), the court soundly rejected the argument, concluding that the claimants had no valid existing right to a patent immune from subsequent congressional restriction. Id. at 579. A mining claimant's interest prior to proceeding to patent was merely the right to possess the land, according to the court, and even "a valid mining location does not limit the rights of the United States as the paramount title holder." Id. The land in question "remains subject to the disposing power of the Congress until [the mining claimant] satisfies the conditions imposed by law for the issuance of a patent." Id. at 580.

The restrictions on patenting upheld in Freese and Alaska Miners were more severe than the restrictions in the Wilderness Act because they abolished patenting entirely. Other court decisions in this area have reached similar results on even more extreme facts. In creating the Jemez National Recreation Area on October 12, 1993, for example, Congress cut off patenting, effective more than two years prior to enactment: "Notwithstanding any other provision of law, no patents shall be issued after May 30, 1991, for any location or claim made in the recreation area under the mining laws of the United States." Jemez National Recreation Area Act (Jemez Act) § 3(a)(1), 16 U.S.C. § 460jjj-2(a)(1) (1994).

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[15] The statute specifically provided:

> On any lands conveyed to Village and Regional Corporations, any person who prior to August 31, 1971, initiated a valid mining claim or location under the general mining laws and recorded notice of said location with the appropriate State or local office shall be protected in his possessory rights, if all requirements of the general mining laws are complied with, for a period of five years and may, if all requirements of the general mining laws are complied with, proceed to patent.

ANCSA § 22(c), 43 U.S.C. § 1621(c)(1) (1994).

In Cook v. United States, 37 Fed. Cl. 435 (1997), the Jemez Act restriction was challenged by claimants who had filed a patent application for 23 mining claims in 1989, paid the purchase price, and received a first half-mineral entry final certificate (FHFC)[16] on January 16, 1991, four months before the date set in the statute for the ban on patenting to take effect. Id. at 437. The plaintiffs argued that the statute effected a taking of their alleged right to a patent. Id. at 436. The Department argued that a vested property interest did not arise until there had been a final determination that the claimants had satisfied all of the requirements for the issuance of a patent. Id. at 440. Because BLM had not completed a mineral examination and there had not been a final determination that the claimants were entitled to a patent, as of May 30, 1991, the Department argued that the claimants' right to patent had not yet vested, and thus no taking occurred. Id. at 438.

In denying the Department's motion for summary judgment, the court held that a claimant's valid existing right to a patent vests only once the claimant has completed all steps required to receive a patent under the Mining Law, including, among other things, filing a patent application. The "existence of a property interest is based," the court stated, "on the applicant, prior to any change in the law, having done all that is required of it under existing law to receive title to public land, including the filing of all papers and, where applicable, the payment to the United States of the purchase price for a patent." Id. at 445-46.[17]

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[16] The "First Half-Mineral Entry Final Certificate" (FHFC) is the Department's internal administrative recordation of an applicant's compliance with the initial paperwork requirements of the Mining Law. By its own terms, the FHFC informs the applicant that the "[p]atent may issue if all is found regular and upon demonstration and verification of a valid discovery of a valuable mineral deposit and subject to the reservations, exceptions, and restrictions noted herein." After the Secretary signs the FHFC, the patent application is returned to BLM for verification that the applicant has made a valuable mineral discovery, or, in the case of a mill site, that the applicant is using and occupying five acres or less of nonmineral lands for mining or milling purposes. BLM then conducts a mineral examination and makes a recommendation on whether patent should issue. See supra note 3. I have previously recommended that BLM stop issuing FHFCs for new and nongrandfathered patent applications should the moratorium ever be lifted. For further background on the FHFC, see Entitlement to a Mineral Patent Under the Mining Law of 1872, M-36990 (Nov. 12, 1997).

[17] The Cook opinion is not a final judgment in the case. At the court's direction, the parties have filed supplemental briefs regarding whether the claimants failed to comply with the requirements for patenting before the change in law and a further decision on the merits is pending. Cook v. United States, No. 94-344L (Fed. Cl.).

In Swanson v. Babbitt, 3 F.3d 1348 (9th Cir. 1993), the Ninth Circuit returned to the patenting restrictions in the Sawtooth Act, and addressed a question left open by the earlier decision in Freese. In Swanson, the claimant had filed a patent application for mill sites in 1967, five years before the statute with its restrictions on patenting was enacted. (While not mentioned in the opinion, the claimant had also paid the purchase price for his mill sites and received an FHFC in December 1967.) BLM began contest proceedings against the mill sites in 1968. Eventually, the Interior Board of Land Appeals (IBLA) rejected the claimant's patent application because of the statutory patent prohibition after deciding that portions of some of the mill sites were valid. United States v. Swanson, 14 IBLA 158, 183 (1974). The rejection of the patent, the IBLA noted, "should not be construed as preventing or interfering with the full exercise of the claimant's right to further work and develop his valid millsite claims" subject to the applicable laws and regulations. Id.

After the district court upheld the IBLA, the Ninth Circuit affirmed. It held that the "plain language of the statute precludes the issuance of a patent to Swanson after 1972, regardless of when the application was filed." Swanson, 3 F.3d at 1352. Until the patent "actually issued," according to the court, "the government retained broad authority to remove those public lands from mining claims and patents, as it did in 1972" with the passage of the Sawtooth Act. Id. Moreover, Congress could act to abolish patenting without infringing upon any property rights of the claimant. Id. at 1353-54; see also Independence Mining, 105 F.3d at 508 (citing to Swanson and holding that "if rights to a patent do not vest pending challenge to its validity, no rights can vest before the Secretary has decided whether to contest the patent claim").

A recent Solicitor's Opinion dealt with the confusion and ensuing litigation surrounding when precisely a patent application was considered "complete" for purposes of establishing an entitlement to a patent. Specifically, it concluded that such an entitlement does not arise until the patent applicant has complied with all the terms and conditions entitling it to a patent under the Mining Law, as determined by the Secretary. Entitlement to a Mineral Patent Under the Mining Law of 1872, M-36990, at 6 (Nov. 12, 1997). Although the Opinion focused on patent applications which are subject to a Congressionally imposed moratorium, see infra note 25, its reasoning supports the conclusion reached here, that a claimant must, prior to a wilderness designation, file a patent application and comply with all the requirements for a patent under the Mining Law in order to establish a valid existing right to a patent of the surface as well as the mineral. See Independence Mining, 105 F.3d at 508 (stating that "the right to a patent arises only after the party seeking the patent has complied with all the terms and conditions entitling it to that patent").

The IBLA has addressed the issue of when a patent applicant has complied with the applicable requirements, for the purpose of fixing the time for determining whether a discovery exists. Specifically, IBLA has said that the "present marketability" of a claim for purposes of deciding whether a discovery exists should be determined "by reference to the date on which the claimant fulfilled all of the prerequisites to the making of the entry, i.e., no later than the date of the issuance of the [first half] final certificate." United States v. Norman A. Whittaker (on recon.), 102 IBLA 162, 166 (1988).

For both legal and practical reasons, the IBLA's rigid cut off date (the FHFC) for determining whether a claimant has complied with all the requirements for obtaining a patent is not an appropriate standard. While the Mining Law specifically requires patent applicants to show such compliance in the patent application, 30 U.S.C. § 29, it has long been the Department's experience that many patent applicants do not, in their initial patent applications, furnish enough information to enable the Department to verify whether the applicant has discovered a valuable mineral deposit (or is properly using and occupying mill sites). Full compliance is not achieved until the applicant has submitted sufficient information to allow the Department to verify a discovery, usually some time after an FHFC has been signed.

Where the applicant has obtained an FHFC, but has not submitted enough information to allow the Department to verify a discovery, the Department's mineral examiner requests additional information from the applicant. In this common situation, the Department should not follow the Whittaker rule and measure "present marketability" as of the date the FHFC is issued. Rather, present marketability should be determined as of the date the applicant submitted adequate information to allow the Department to verify the discovery. Where the applicant has submitted sufficient information at the time the FHFC is issued, however, the Whittaker standard may still be followed.[18]

Commentators are in accord with the general conclusion reached here regarding mining claimants' rights. George C. Coggins & Robert L. Glicksman, 2 Public Natural Resources Law 14B-26 (1997) (footnote omitted) ("The mineral deposit limitation on patents is subject to 'valid existing rights,' but closely analogous authority holds that a mineral locator has no vested right to a patent, unless perhaps the locator has filed a patent application and met all other requirements prior to designation of the area.") (citing Swanson, 3 F.3d at 1352-54, and Freese, 639 F.2d 754); Charles F. Wilkinson & H. Michael Anderson, Land and Resource Planning in the National Forests, 64 Or. L. Rev. 1, 364 & n.1982 (1985) (citing Freese and stating that the "opportunity to apply for a patent . . . apparently falls short of being a compensable property right").

V. The California Desert and the IBLA

Section 601 of FLPMA created the California Desert Conservation Area (CDCA), and addressed, in a curiously awkward way, the treatment of mining claims within its borders—not by restricting patenting, but by adding regulatory conditions to the patent:

> Subject to valid existing rights, nothing in this Act [FLPMA] shall affect the applicability of the United States mining laws on the public lands

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[18] This question should not arise for new and nongrandfathered patent applications. See supra note 16.

> within the California Desert Conservation Area, except that all mining claims located on public lands within the California Desert Conservation Area shall be subject to such reasonable regulations as the Secretary may prescribe to effectuate the purposes of this section. Any patent issued on any such mining claim shall recite this limitation and continue to be subject to such regulations. Such regulations shall provide for such measures as may be reasonable to protect the scenic, scientific, and environmental values of the public lands of the California Desert Conservation Area against undue impairment, and to assure against pollution of the streams and waters within the California Desert Conservation Area.

FLPMA § 601(f), 43 U.S.C. § 1781(f) (1994) (emphasis added). Section 302(b) of FLPMA expressly provides that section 601(f) amends the Mining Law and may impair the rights of any locators or claims under the Mining Law. 43 U.S.C. § 1732(b).

In two mid-1980s decisions construing section 601(f), the IBLA departed rather sharply from the modern trend of case law on valid existing rights in mining claims. In California Portland Cement Corp., 83 IBLA 11 (1984), the claimant had filed a patent application before FLPMA was enacted, but the application was incomplete (or, in the words of the IBLA, "not perfected") because the claimant had not tendered the purchase price. Id. at 12. Focusing on the "subject to valid existing rights" language in the opening phrase of section 601(f) along with the fact that the claimant had apparently made a discovery of a valuable mineral deposit prior to FLPMA,[19] the IBLA held, over a dissent, that the addition of the stipulation in the appellant's patent was improper. Id. at 16. The IBLA stated that Congress intended to have the section 601(f) stipulation "placed only in patents to claims which are perfected after the passage of FLPMA," because "to give effect to the phrase 'subject to valid existing rights' the statute must be applied only to mineral locations which had not been perfected prior to the passage of FLPMA." Id.

The majority opinion lays out an unconvincing reading of the legislative history of section 601 to reach this result. The House-passed version of the bill would have applied the regulatory authority of the Secretary contained in the first sentence of section 601 only to mining claims located "after the date of approval of this Act." The quoted language was deleted in the conference without explanation. The IBLA majority said it must have been deleted because it was redundant. Id. at 15. The more logical explanation is that, as stated by the dissent,

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[19] The IBLA opinion never expressly states that the claimant had a valid discovery, but does say that the claimant had "performed" all other things required of it as part of its patent application," California Portland Cement, 83 IBLA at 12, and later contrasted the claims at issue with ones "which are perfected after the passage of FLPMA," or "had not been perfected prior to the passage of FLPMA." Id. at 16.

> The deletion of this limitation by the conference committee and the subsequent passage of section 601(f), as written, supports an interpretation that Congress sought to impose the provisions of section 601(f) on all mining claims in the California Desert Conservation Area, i.e., on those claims located prior to FLPMA's enactment and on those claims located subsequent thereto.

Id. at 19 (Harris, A.J., dissenting).[20] Nevertheless, the majority held that the inclusion of the stipulation was improper because the claimant was protected by the "subject to valid existing rights" language of section 601(f).

The IBLA came to a similar conclusion, using somewhat more clear reasoning, in Lee Chemicals, 86 IBLA 164 (1985). Although the claimant in Lee Chemicals had, like the claimant in Swanson, submitted a patent application before the restriction became effective, the IBLA did not base its determination on the point in the patenting process at which the claimant established a right to a patent. Rather, the IBLA ended its analysis of whether the claimant had established a valid existing right after it determined that there was a discovery as of the date FLPMA was enacted. In Lee Chemicals, IBLA reexamined the deletion, in the Conference Report, of the language limiting the Secretary's regulatory authority to new claims. Because Congress retained the "subject to valid existing rights" language, IBLA found that "Congress effectively differentiated between existing locations supported by a discovery and those not." Id. at 167. In essence, then, the IBLA read "valid existing rights" to encompass claims supported by a discovery, rather than claims that already had a vested right to a patent.

There appears to be no discernible difference, in legal effect, between the prohibitions or restrictions on patenting upheld as against valid mining claims in Freese, Alaska Miners, and Swanson, and FLPMA section 601(f)'s acknowledgment of a continuing federal regulatory responsibility in patents for claims located in the CDCA. Any difference would cut against rather than in favor of the IBLA's restrictive application of the California Desert stipulation.[21] In short, the IBLA's reasoning in California Portland Cement and Lee Chemicals is directly contrary to the rationale of these federal court decisions, two of which (Freese and Alaska Miners) predate, but were not addressed in, the IBLA decisions. Instead, the valid existing rights provision in section 601(f), if indeed it applies to the patenting restriction as the IBLA interprets it,[22] should be given effect in the same way the valid existing rights provision will be given effect in section 4(d)(3) of the Wilderness Act—by construing it narrowly to apply only to the clear establishment of a right to a patent prior to the protective designation of the area.

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[20] The dissent reasoned that because section 601(f) expressly amended the Mining Law to require inclusion of the CDCA stipulation, unless a right to a patent vested prior to the enactment of FLPMA, all that could have been acquired under the Mining Law was a patent that included the CDCA stipulation. California Portland Cement, 83 IBLA at 19 (Harris, A.J., dissenting).

[21] Several cases have upheld the authority of federal land managers to directly regulate activities on nonfederal lands or interests therein in order to protect federal land. See, e.g., United States v. Vogler, 859 F.2d 638 (9th Cir. 1988), cert. denied, 488 U.S. 1006 (1989); Free Enter. Canoe Renters Ass'n v. Watt, 711 F.2d 852 (8th Cir. 1983); United States v. Brown, 552 F.2d 817 (8th Cir.), cert. denied, 431 U.S. 949 (1977). Congress did not need, in other words, to include a condition in the mining patent authorizing "reasonable regulation" of activities on the patented claim in order to protect the resources of the CDCA. An exercise of federal regulatory power such as this is, if anything, easier to justify than a restriction on the patent itself.

Because the federal court decisions are both more authoritative and more persuasive in their reasoning, the Department should no longer rely on California Portland Cement or Lee Chemicals when determining whether to include the CDCA stipulation in a patent for lands within the CDCA. Nor should the Department rely on these two cases when determining whether to reserve the surface estate in a patent for lands within a wilderness area or to restrict patenting as required by other similar statutes.

VI. BLM Regulations and Manual

Departmental regulations and the BLM Manual do not distinguish between claims for which a right to a patent had been established before a wilderness designation and those for which no right to a patent had been established. The pertinent departmental regulation deals only with patenting in National Forest System wilderness areas and has remained unchanged since originally promulgated in 1966. Prospecting, Mineral Locations, and Mineral Patents Within National Forest Wilderness, 31 Fed. Reg. 3013, 3014 (1966). It simply says that any patents issued for mining claims either located or validated by a discovery after enactment of the Wilderness Act should be for minerals only, with the United States reserving the surface estate. 43 C.F.R. § 3823.3 (1997). Although the regulation does not address whether a surface estate reservation is required under any other circumstances, one could infer from it that no surface reservation is required otherwise.

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[22] The words "subject to valid existing rights" do not appear in the specific sentence requiring the CDCA patent stipulation. It is possible to interpret section 601(f) as protecting valid existing rights, "if any." Moreover, even assuming that there are valid existing rights to protect, the IBLA was mistaken in determining that the claimant in both California Portland Cement and Lee Chemicals had established valid existing rights. As discussed earlier, the point at which a claimant's right to a patent vests is not at the time of discovery, but at the time the claimant satisfies all the requirements for obtaining a patent, as determined by the Secretary. If a claimant's rights have not vested at the time Congress acts to restrict patenting, that claimant has no valid existing right to protect against a subsequent assertion of regulatory authority, as explained by court decisions in this evolving area of law. The IBLA's error, then, was not just in ascribing significance to the "subject to valid existing rights" language in section 601(f), but also in erroneously applying that protection, if any, to a broader range of claimants than the case law interpreting comparable statutes would require.

The Department promulgated additional wilderness area mining regulations in 1985 to implement section 603 of FLPMA (see supra note 4), but these regulations are even more murky 43 C.F.R. § 8560.4-6 (1997). They do not mention patenting with a surface reservation at all, but again one could infer that they contemplate the Wilderness Act restrictions apply only to claims located, or validated by a discovery, after Congress designates an area as wilderness.

BLM's Manual is somewhat more explicit, stating:

> (1) For claims located before enactment of the Wilderness Act of September 3, 1964 (16 U.S.C. 1131 et seq.), the claims must have a discovery as of the date of enactment [of the Wilderness Act] to acquire the surface and mineral estates.
>
> (2) Claims located after date of enactment [of the Wilderness Act], or preexisting claims not validated by discovery as of the date of enactment [of the Wilderness Act], are subject to a reservation of the surface estate to the United States.
>
> (3) For newly created wilderness areas, claims located after date of enactment [of the wilderness area], or preexisting claims not validated by discovery as of the date of enactment [of the wilderness area], are subject to a reservation of the surface estate to the United States.

BLM Manual H-3860-1, Mineral Patent Application Processing VIII-7 (Apr. 17, 1991) (emphasis added). This rather strongly implies that mining claims which were located and validated by a discovery prior to a wilderness designation, but for which no patent application was filed, may be patented without a reservation of the surface estate. This is, for reasons discussed above, an incorrect view of the applicable legal requirements. BLM should explicitly incorporate the guidance in this Opinion in both its regulations and its Manual.

VII. Mill Sites

The last issue is how to handle patent applications for mill sites located in designated wilderness areas. Mill sites are a peculiar species of mining claim because they are defined to be "nonmineral" in character. See 30 U.S.C. § 42 (1994). To the extent the Wilderness Act limits patenting to the mineral deposit only, mill sites cannot be patented, because by definition they contain no mineral deposits. Therefore, if a mill site claimant in a wilderness area has not established a valid existing right to an unrestricted patent prior to the wilderness designation, it cannot obtain a patent.[23] The claimant may, of course, still hold a valid mill site which it may continue to operate in connection with a valid mining claim.[24]

VIII. Conclusion

After careful consideration of the plain language of the Wilderness Act, its legislative history, subsequent case law, and previous Solicitor's Opinions, I conclude that mineral patents issued under the Mining Law for lands within wilderness areas, no matter when designated, should convey only the mineral deposits within the claim, unless the mining claim for which the patent is sought was located and validated by a discovery prior to designation of the wilderness area and the claimant complied with all the requirements for obtaining a patent under the Mining Law prior to the wilderness designation, as determined by the Secretary. I further conclude that no patents for mill sites may be issued for lands within wilderness areas, no matter when designated, unless the mill site for which the patent is sought was properly located prior to designation of the wilderness area and the claimant complied with all the requirements for obtaining a patent under the Mining Law prior to the wilderness designation, as determined by the Secretary.

BLM should follow the guidance of this Opinion in making its recommendations for patenting mining claims located in wilderness areas as well as in other areas where Congress has enacted limitations on patenting, subject to valid existing rights. This Opinion will be applied to all new and currently pending patent applications.[25] Applying it to existing applications is appropriate because it will carry out the thrust of the Wilderness Act to effect maximum wilderness preservation, while at the same time, for reasons given earlier, have little, if any, impact on development of any valuable mineral deposits found on these claims. This Opinion does not, however, affect any patents already issued for lands in designated wilderness areas or other withdrawn areas. Finally, BLM should amend its regulations (43 C.F.R. § 3823.3 and 43 C.F.R. § 8560.4-6) and its Manual (H-3860-1) to comport with this Opinion.

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[23] In general, in determining whether a claimant has established a right to patent a dependent mill site, the mill site must be associated with a previously patented mining claim or with a valid unpatented mining claim which will be patented concurrently. See Limitations on Patenting Millsites under the Mining Law of 1872, M-36988 (Nov. 7, 1997). In addition, a patent applicant may not patent more than five mill site acres per associated mining claim. Id.

[24] The continued use of unpatented mill sites in wilderness areas is expressly recognized in section 4(d)(3) of the Wilderness Act, with its reference to the use of mining locations in wilderness areas "solely for mining or processing operations and uses reasonably incident thereto." 16 U.S.C. § 1133(d)(3) (emphasis added).

[25] For the past four fiscal years, Congress has included a moratorium on the acceptance of new patent applications or processing of certain previously-filed patent applications in the Department's annual appropriation. See, e.g., Pub. L. No. 105-83 § 314(a), 111 Stat. 1543, 1591 (1997) ("None of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended to accept or process applications for a patent for any mining or mill site claim located under the general mining laws."); Pub. L. No. 104-208 § 314(a), 110 Stat. 3009, 3009-221 (1996) (identical language in the Department's 1997 appropriation); Pub. L. No. 104-134 § 322(a), 110 Stat. 1321, 1321-203 (1996) (identical language in the Department's 1996 appropriation). Excepted from the moratorium are certain pending patent applications that had reached a specific stage of processing when the moratorium was first imposed. Some of these

This Opinion was prepared with the substantial assistance of Kendra Nitta and Karen Hawbecker, attorneys in the Division of Mineral Resources, and Sam Kalen, when he was an attorney in the Office of the Solicitor.

John Leshy

John D. Leshy
Solicitor

Approved:

Secretary of the Interior

5/22/98
Date

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include land within designated wilderness. This Opinion will be applied to those applications exempted from the moratorium, as well as to any new and nongrandfathered applications filed if and when Congress lifts the moratorium.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

September 14, 1998

In Reply Refer To:
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EMS Transmission 9/16/98
Instruction Memorandum No. 98-167
Expires: 09/30/99

To: All State Directors

From: Director

Subject: Unmarketable Resources ("Excess Reserves") Policy

PROGRAM AREA: Mining Law

ISSUE: Determination of unmarketable resources ("excess reserves") for mineral validity examinations of industrial mineral deposits

BACKGROUND: On March 22, 1996, the Solicitor issued Opinion M-36984 entitled "Excess Reserves Under the Mining Law." (Attached.) [1] The Opinion concluded that BLM may contest the validity of a mining claim on the grounds of lack of discovery to the extent that the mineral deposits within the mining claim exceed the reasonably foreseeable market demand for the mineral, taking into account other resources in the mining area held by the claimant. The reason for this is that there is no valuable discovery under the Mining Law unless the mineral deposit is presently marketable. Solicitor's Opinion M-36984 at 1. As the Opinion pointed out, "[w]ere the excess reserves rule not followed, the Mining Law would in effect authorize the appropriation and even privatization (under the Mining Law's patent provision) of Federal lands when there is no reasonable prospect that the lands will be mined in the foreseeable future." Id. at 3. The Opinion recognized that a claimant may hold "reasonable reserves" for future supply to carry on the mining operation for a reasonable period of time. Id. at 4. However, any mineral supply that cannot be marketed within that reasonable period does not constitute a valuable discovery under the law. The Solicitor's Opinion suggested that BLM develop guidance for determining when marketability of the mineral resource could be affected by "excess reserves."

"Excess reserves" have historically been characterized as those parts of a mineral deposit for which there is no current or reasonably foreseeable market to support development because the supply of mineral exceeds the demand. "To the extent excess reserves exist, in other words, a valuable mineral deposit does not exist." Id. at 2. The term "reserves" is actually inappropriate in this context, because "reserves" refers to the amount of resource material in the ground that can be extracted and marketed at a profit. As the Solicitor's Opinion noted, "'[e]xcess reserves,' by definition, have no present value in the marketplace and therefore, cannot be said to be 'valuable mineral deposits' within the meaning of 30 U.S.C. § 22." Solicitor's Opinion M-36984 at 2. The Solicitor's Opinion did not attempt to change the "excess reserves" terminology for fear that the change would cause more confusion. Id. We believe, however, that it will be most helpful to mineral examiners to refer to the concept of "excess reserves" by the more appropriate and descriptive term "unmarketable resources." We therefore use the term "unmarketable resources" in this memorandum to mean exactly what "excess reserves" means in the Solicitor's Opinion.

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[1] This Opinion was also attached to Information Bulletin 96-103 dated April 5, 1996.

The Solicitor's Opinion gave examples of widely found industrial minerals that may occur in such abundance that "unmarketable resources" becomes an issue. These include limestone, pumice, gypsum, perlite, cinders, sand, and gravel. Id. at 2-3. This Instruction Memorandum applies to claims or claim groups for such industrial minerals.[2]

In order to determine whether a mining claimant has unmarketable resources, you should first determine the extent of the industrial mineral deposit, the available market for the particular mineral, and the number of years the deposit might supply that market. Because every mineral deposit and mining operation differs, it is impossible to designate a standard method for making these determinations. Instead, the mineral examiner must make them on a case-by-case basis. When examining mining claims with potential unmarketable resources problems, the mineral examiner should refer to United States v. Oneida Perlite Corp., 88 I.D. 772, 57 IBLA 167 (1981), and referenced cases therein for general guidance related to researching and analyzing markets.

Unmarketable resources may be viewed as a facet of the "mineral in character" concept. If the claimant has located mining claims containing industrial minerals which cannot be marketed and sold in the reasonably foreseeable future, the unmarketable portion of the deposit is not a valuable mineral deposit within the context of the mining law and the land on which that unmarketable deposit is found is not mineral in character. BLM must apply this concept to each ten (10) acres of placer claims and to lode claims in their entirety, and in doing so must consider the total resource base of the mine. United States v. Oneida Perlite Corp., 88 I.D. at 788.

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[2] One definition of "industrial minerals" is "[a]ny rock, mineral, or other naturally occurring substance of economic value, exclusive of metallic ores, mineral fuels, and gemstones; one of the nonmetallics." AMERICAN GEOLOGICAL INST., GLOSSARY OF GEOLOGY 316 (Robert L. Bates & Julia A. Jackson eds., 2d ed. 1980). We note that the term is not limited to minerals used in heavy industry, but includes minerals with other economic values, such as decorative uses.

The courts have held that lands should not be conveyed under the mining law where mining claims have been located for vast deposits which cannot be marketed within the reasonably foreseeable future, considering reasonable market fluctuation. The purpose of this Instruction Memorandum is to define what time period constitutes the "reasonably foreseeable future" for marketability so that the mineral examiner can determine whether any portions of the available industrial mineral deposits are unmarketable and, therefore, nonmineral in character.

While it is possible that current market and production circumstances will continue indefinitely into the future, it is more probable that circumstances will change with time. For example, prospective markets might diminish with the unforeseen introduction of alternative or replacement products, or markets might expand due to new use applications. It is generally recognized that the accuracy and reliability of predictions diminish as the predictions extend further into the future. Clearly, we need to be concerned with the reliability of market predictions in light of the irrevocable nature of patenting under the mining law.

Although the courts have upheld the principle that minerals which cannot be marketed within the reasonably foreseeable future are not valuable within the meaning of the Mining Law, they have not provided guidance defining "reasonably foreseeable future." We have therefore looked to several other sources to supply that guidance. In an early Interior Board of Land Appeals (IBLA) case related to unmarketable resources, United States v. Anderson, 74 I.D. 292 (1967), the claimants were allowed a 30-year reserve. The Internal Revenue Service (IRS) has specified a 39-year maximum allowable term for the depreciation of mining equipment. In enacting the Federal Coal Leasing Amendments Act (FCLAA) for the coal leasing program, Congress limited the duration of a logical mining unit to not more than 40 years. It is reasonable to impose similar limitations when measuring the marketability of an industrial mineral deposit. Therefore, in conducting validity examinations of mining claims which have unmarketable quantities of a given industrial mineral, you should treat as nonmineral in character those portions of mining claims that contain mineral deposits which cannot be marketed within 40 years of: 1) the time a patent applicant has complied with all patenting requirements for claims not in a withdrawn area, 2) the date of withdrawal for claims on lands withdrawn from the operation of the Mining Law, or 3) for all others, the time of the mineral examination.

POLICY: BLM is defining the "reasonably foreseeable future" as 40 years for purposes of marketability determinations for validity examinations of mining claims for industrial minerals. When examining such unpatented mining claim(s) for validity, if the supply of claimed minerals appears to exceed the present demand, the mineral examiner should first determine the amount of resource material in that particular mineral deposit which is available for marketing. If the mineral examiner identifies a supply of resource material which exceeds 40 years, the examiner should apply a 40-year projection of market demand to determine the portion of those resources which can be considered a valuable deposit (reserves) under the mining law. In making this determination, the examiner must use a reasonable method which considers the particular mineral involved and the market demand and marketing and financing arrangements for that mineral, other resources in the mining area held by the claimant on both public and private lands, changing market conditions, availability of substitute materials, advancements in technology, and any other relevant factors.

The mineral examiner should use the mining progression outlined in the current approved or proposed mine plan to determine which claims will be mined in that 40-year period. The examiner should consider land containing industrial mineral resources which cannot be mined and marketed within 40 years as nonmineral in character, not presently marketable and, therefore, not available to support a mining claim. If the mine plan indicates that only part of a placer claim contains a valuable deposit under this definition, the examiner should apply the 10-acre rule to determine whether parts of the claim are nonmineral in character. If only part of a lode claim contains a valuable deposit, evaluate the entire claim based on that part of the deposit that is considered valuable under the above definition. (If any portion of a lode claim meets the test of a valuable discovery, the entire claim is valid, as lode claims are not subdivided into smaller tracts.)

If the mineral patent applicant or mining claimant will not withdraw the application or relinquish the mining claims determined to contain unmarketable resources, you may initiate a contest action. The proper contest charges are found in Handbook H-3870-1 "Adverse Claims, Protest, Contests, and Appeals, " Chapter IV-2 and IV-3.

Action Required: Apply this policy to any industrial mineral patent case or mining claim validity case that involves unmarketable resources.

Time frame: Immediate.

Budget Implications: None

Coordination: Usual Channels

Contact: Roger Haskins or Brenda Aird, WO-320, (202) 452-0355.

Signed by:
Pat Shea
Director

Authenticated by:
Robert M. Williams
Directives, Records
& Internet Group,WO540

1 Attachment (sent under separate cover)
1 - Solicitor's issued Opinion M-36984 (9 pp)

MARCH 3, 1849

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D. C. 20240

April 5, 1996

In Reply Refer To:
3800 (320)

Information Bulletin No. 96-103

To: All Field Officials

From: Director

Subject: Excess Reserves Under the Mining Law

Attached is a Solicitor's opinion addressing the applicability of excess reserves in a determination of claim validity under the Mining Law of 1872. This opinion was initiated by a request from the California State Office for guidance on whether "excess reserves" should be allowed to support a mineral patent in light of recent, seemingly contradictory, judicial and administrative decisions. The opinion concludes that excess reserves cannot support a valid mining claim.

Please ensure that all mineral examiners, mineral exam reviewers and other personnel working in the mining law area are aware of this opinion. If you have any questions, please contact Roger Haskins at (202) 452-0350.

W. Hord Tipton
Assistant Director
Resource Use and Protection

1 Attachment
  1 - Excess Reserves under the Mining Law Letter dated 3/22/96 from Solicitor (9 pp)

United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

MAR 22 1996

M-36984

Memorandum

To: Director, Bureau of Land Management

From: Solicitor

Subject: Excess Reserves Under the Mining Law

The Bureau of Land Management (BLM) California State Office has requested guidance on whether a quantity of mineral that is not presently marketable (commonly described as "excess reserves") should be allowed to support a mineral patent pursuant to the Mining Law of 1872. This issue has arisen in the context of an application to patent a volume of common cinders in Inyo County, California that would supply the known market for 270 years. For the reasons that follow, I hold that whether excess reserves exist is a fundamental element in the marketability test and must be considered in a mineral report. Excess reserves, by definition, are not presently marketable and, therefore, cannot suport a valid mining claim.

BACKGROUND

A. Excess Reserves and Marketability

The test for determining whether a "valuable mineral deposit" has been "discovered" within the meaning of the Mining Law, see 30 U.S.C. §§ 22, 23, and thus creates certain rights against the United States, may require an inquiry into whether a mining claimant is holding excess reserves. The Interior Board of Land Appeals (IBLA) has for many decades recognized that the presence of excess reserves affects the validity of a mining claim. United States v. Anderson, 74 I.D. 292, 303 (1967); United States v. Bunkowski, 79 I.D. 43, 5 IBLA 102 (1972); United States v. McElwaine, 26 IBLA 20, 24 (1976).

The reason is straightforward: In order to satisfy the discovery test, a mineral deposit must be presently marketable. See United States v. Coleman, 390 U.S. 599, 602 (1968); Ideal Basic Ind., Inc. v. Morton, 542 F.2d 1364, 1369 (9th Cir. 1976) ("presently valuable mineral"); Barrows v. Hickel, 447 F.2d 80, 83 (9th Cir. 1971); Foster v. Seaton, 271 F.2d 836, 838 (D.C. Cir. 1959); United States v. Feezor, 130 IBLA 146, 189 (1994) ("presently marketable at a profit"); In re Pacific Coast Molybdenum, 75 IBLA 16, 28-30, 90 I.D. 352, 360 (1983) ("as a present fact"); Solicitor's Opinion M-36642, *Marketability Rule*, 69 I.D. 145, 146 (1962) (where available deposits far exceed the market, "proof of present marketability must be clearly shown"); cf. Layman v. Ellis, 54 I.D. 294, 296 (1933).

The size of a mineral deposit in relation to demand necessarily affects whether, or to what degree, that deposit is presently marketable. Specifically, where the total quantity of a mineral in a specific deposit exceeds all demand for that mineral in the market area for the foreseeable future, there is neither a present nor reasonably foreseeable future market for the particular mineral. To the extent excess reserves exist, in other words, a valuable mineral deposit does not exist. As the Ninth Circuit has put it:

> If supply so calculated amounts to a superabundance and so overwhelms the existing demand as to reduce the value or profit increment to a level below that which would prove attractive to a prudent man, the material cannot be said to be marketable at a profit.

Melluzzo v. Morton, 534 F.2d 860, 864 (9th Cir. 1976). This principle has been called the "excess reserves" rule. The label "reserves" is inapt in this context to the extent it connotes or implies a mineral deposit that has a present value in the marketplace.[1] "Excess reserves," by definition, have no present value in the marketplace and therefore cannot be said to be "valuable mineral deposits" within the meaning of 30 U.S.C. § 22. Nevertheless, the terminology has been used long enough that it could cause more confusion if we were to change it.

The Department has historically applied the "excess reserves" rule only with respect to

> those types of minerals which occur in such abundance that only a small portion of the known deposits can be absorbed by the market at a profit. Minerals for which there is virtually unlimited demand, such as precious metals, and which can be extracted and sold at a profit, of course would not be the subject of such concern.

United States v. Oneida Perlite Corp., 88 I.D. 772, 786-87, 57 IBLA 167 (1981). Widely found industrial minerals that are subject to local or regional market forces include limestone, pumice, gypsum, perlite, cinders, sand, and gravel. A claim or claim group for such commodities may contain far more material than can be marketed now or in the reasonably foreseeable future.[2]

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[1] Cf. United States Department of Interior, A Dictionary of Mining, Mineral, and Related Terms 914 (1968) (defining reserves as possibly depending, in some circumstances, on application of "contemporary economic factors," among other things).

The excess reserves rule is important in part because it tends to thwart the misuse of the Mining Law for non-mineral purposes. Were the excess reserves rule not followed, the Mining Law would in effect authorize the appropriation and even privatization (under the Mining law's patent provision) of federal lands when there is no reasonable prospect that the lands will be mined in the foreseeable future. As the Supreme Court has put it (in a unanimous opinion), "the federal mining law surely was not intended to be a general real estate law . . . ." Andrus v. Charlestone Stone Products Co., 436 U.S. 604, 611 (1978). Similarly, in United States v. Coleman, 390 U.S. 599, 602-03 (1968), the Court emphasized the importance of the marketability test as a way to ensure that claimants are not seeking land for purposes other than mining.

A federal judge once pointed out that, were there no such limitation, the "end result would be that 100,000 acres of public lands [on the outskirts of Las Vegas, Nevada, could be] patented as valuable for mining, where . . . not more than one percent of the material might have been marketable in the reasonably foreseeable future." Osborne v. Hammitt, 377 F. Supp. 977 (D. Nev. 1964). See also Melluzzo v. Morton, 534 F.2d 860 (9th Cir. 1976); Clear Gravel Enterprises v. Keil, 505 F.2d 180 (9th Cir. 1974), cert. denied, 421 U.S. 930 (1975).

Excess reserves can exist on a single claim or all or part of a group of claims, considered collectively. On a single twenty-acre placer claim, for example, IBLA has held that ten acre increments of the claim which contain excess reserves cannot be said to embrace a valuable mineral deposit. See United States v. McCall, 7 IBLA 21, 79 I.D. 457 (1972), aff'd, McCall v. Andrus, 628 F.2d 1185 (9th Cir. 1980), cert. denied, 450 U.S. 996 (1981); cf. United States v. Clare Williamson & Lapine Pumice Co., 87 I.D. 34, 53 n.8, 45 IBLA 264 (1980). Or, where a mining claimant holds a group of several claims, which collectively contain reserves exceeding what is both presently marketable and necessary as a reasonable reserve supply, those claims constituting "excess reserves" would not constitute a valuable mineral deposit. See generally United States v. Oneida Perlite Corp., 88 I.D. 772, 57 IBLA 167 (1981).

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[2] The application of the Mining Law to such minerals has had a long and tortuous history. See Zimmerman v. Brunson, 39 L.D. 310 (1910); Layman v. Ellis, 52 L.D. 714 (1929); Act of July 23, 1955, 69 Stat. 368, 30 U.S.C. § 611 (1994).

B. Reasonable Reserves

The present marketability requirement does not mean that a claim must contain a mineral deposit that can be marketed immediately. The Department has recognized that a mining claimant may hold "reasonable reserves" for future supply consistent with the present marketability requirement. United States v. Oneida Perlite Corp., 88 I.D. 772, 780-82, 57 IBLA 167 (1981); see also United States v. Gibbs, 13 IBLA 382, 396 (1973); United States v. Harenberg, 9 IBLA 77, 80 (1973); United States v. Bunkowski, 5 IBLA 102, 79 I.D. 43 (1972). In Oneida Perlite Corp., the IBLA explained:

> What amount of reserves is "reasonable" is a determination to be decided on the basis of the evidence in each case. The nature of the mineral, its unit value, the extent of the market, and whether it is expanding or diminishing, the amount of similar mineral which can supply the market from other sources, might all bear on the question of whether the location of additional claims for the same mineral was justified as the act of a prudent man in the reasonable belief that by the expenditure of his labor and means a valuable mine might be developed on each such claim.

88 I.D. at 787 (citations omitted). Cf. United States v. Anderson, 74 I.D. 292, 303 (1967) ("[j]ustification exists only for holding valid those claims which would supply contestees with the deposits necessary to carry on an operation of the size they contemplate for a reasonable period of time, for in a hard economic sense only those deposits have a reasonable prospect of a market")(emphasis added); United States v. Clare Williamson & Lapine Pumice Co., 87 I.D. 34, 52, 45 IBLA 264 (1980) (reasonably foreseeable market).

BAKER AND ITS AFTERMATH

A. Baker v. United States

In 1980, the United States Court of Appeals for the Ninth Circuit found "no basis to support" what it derided as IBLA's "too much" rule. Baker v. United States, 613 F.2d 224 (9th Cir.), cert. denied, 449 U.S. 932 (1980). Baker submitted a patent application for four placer mining claims located on a volcanic cinder deposit prior to the Common Varieties Act of 1955. The primary market for this low-grade mineral was as fill material for landscaping and road construction. The IBLA held two of the four claims invalid in a contest brought by the Forest Service. On appeal, the Ninth Circuit said that IBLA had first found that Baker's application satisfied the "marketability" test for discovery, but had then inexplicably gone on to conclude "that Baker had located claims in excess of the reasonably anticipated market needs for cinders (the too much test)." 613 F.2d at 226. After treating IBLA's decision as establishing a new test, which it believed imposed an additional requirement for discovery under the Mining Law beyond marketability, the court rejected it.[3]

In fact, however, the IBLA had not erected a new requirement. It did agree that Baker had made a discovery, but on only some, not all, of his claims. United States v. Baker, 23 IBLA 319 (1976). A basic problem with his claims was that "some substantial portion of the available market was for purposes which are not cognizable under the mining law [i.e., its use as a road base]." 23 IBLA at 333.[4] The IBLA explained:

> It follows that if sales of material of such non-cognizable uses cannot be considered in determining the marketability of the material in order to establish the value of the deposit, it would be equally improper to consider sales for such uses for the purpose of determining what volume of material a prudent locator might claim in the reasonable anticipation that the demands of the market would require that amount in the foreseeable future, reasonably projected.

Id.

Citing its previous decisions applying the excess reserves rule, the IBLA held:

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[3] The Baker court distinguished Hallenbeck v. Kleppe, 590 F.2d 852 (10th Cir. 1979), Clear Gravel Enterprises v. Keil, 505 F.2d 180 (9th Cir. 1974), cert. denied, 421 U.S. 930 (1975) and Osborne v. Hammit, 377 F. Supp. 977 (D. Nev. 1964), by explaining that each of those cases involved the application of the present marketability test. 613 F.2d at 227, 227 n.5, 228.

[4] Section 3 of the Act of July 23, 1955, 69 Stat. 368, 30 U.S.C. § 611, withdrew "common varieties" of cinders from location under the general mining laws. Baker, therefore, had to show that a discovery of a "valuable" cinder deposit existed prior to July 23, 1955. And "material suitable only for fill purposes or for road base or for comparable uses has never been locatable under the mining laws, and, even if the material is suitable for other purposes, the sale of material for the uses just enumerated cannot be considered in determining its marketability." United States v. Barrows, 76 I.D. 299, 306 (1969), aff'd sub nom. Barrows v. Hickel, 447 F.2d 80 (9th Cir. 1971). See also United States v. Verdugo & Miller, Inc., 37 IBLA 277, 279 (1978) ("material which is principally valuable for use as fill, sub--base, ballast, riprap . . . was never locatable.").

> The record . . . is devoid of any evidence which would even tend to justify Baker's location of multiple claims embracing 15 million tons of cinders. . . . Neither is there any evidence that there was, or is, any likelihood whatever that the market demand, reasonably projected for years into the future, will or could absorb such a quantity from these claims for purposes recognized under the mining law.

Id. at 334-35.

The Supreme Court denied the Department's request to review the Ninth Circuit's decision in Baker. Three Justices dissented. Writing for them, Justice Blackmun agreed that the court of appeals' ruling may have been premised upon a misunderstanding and, thus, might allow the privatization of lands without any presently marketable mineral deposit. In the process, he wrote, the court of appeals may have "unduly restrained the Secretary's authority to evaluate claims of mineral discoveries on public lands. . . ." 449 U.S. at 934.[5]

B. More Guidance from the Ninth Circuit: McCall v. Andrus

Just five months after Baker, the Ninth Circuit decided another excess reserves case. McCall v. Andrus, 628 F.2d 1185 (9th Cir. 1980), cert. denied, 450 U.S. 996 (1981). In the process, it distinguished and effectively limited Baker.

In McCall, claimants filed a patent application for a group of mining claims in the Las Vegas valley alleged to be valuable for sand and gravel. They received patents for part of five claims, but the BLM contested the remainder, alleging that portions were not "mineral in character," applying the long-held rule that each 10-acre tract of a placer mining claim must contain a valuable mineral. See American Smelting & Refining Co., 39 L.D. 299, 301 (1910). As the IBLA noted in partially upholding BLM's challenge, "for land to be determined to be mineral in character the rule has always included demonstration of removing and marketing at a profit." 79 I.D. at 465.

The hearing examiner held that certain 10-acre parcels in the claims were not mineral in character because the sand and gravel they contained would meet market demand for 100 years, so that on these facts, "it was not economically feasible to produce the material on the contested tracts." 628 F.2d at 1188 (quoting the hearing examiner).

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[5] For a critique of Baker, see Donald W. Large, *Defining "Valuable" Mineral Deposits--A Continuing Legal Quagmire*, 1986 Ariz. St. L. J. 473-483. See also B. Lee, *Hardrock Mining and the Antitrust Laws: Too Much is Really Too Much, Even in the Ninth Circuit*, 15 Golden Gate L. Rev. 49-64 (1985).

The Ninth Circuit held that consideration of the relationship between the quantity of the reserves and the existing market "is a proper application of the test for determining whether land is mineral in character." Id. It discussed its pre-Baker decision in Melluzzo v. Morton, 534 F.2d 860, 864 (9th Cir. 1976), pointing out that "there is more to proof of marketability than proof that there was a local market," and quoting Melluzzo's requirement that it "must appear that local demand was able to absorb additional material . . . and still permit an attractive profit to be realized." The court held that its "recent decision in Baker . . . is not controlling here," because in McCall the "character of the land claimed was contested," whereas in Baker the IBLA had "refused to grant a patent for three entire claims even though it found that a valid discovery had been made on each claim." 628 F.2d at 1189 (emphasis added).

While the Ninth Circuit has subsequently not reaffirmed the substantive holding in Baker, it has cited McCall with approval. Specifically, in Dredge Corp. v. Conn, 733 F.2d 704 (9th Cir. 1984). the court reaffirmed its pre-Baker holding in Melluzzo v. Morton, 534 F.2d 860 (9th Cir. 1976); cited to McCall four times;[6] and upheld the IBLA's rejection of a mining claim for a mineral whose supply in the marketplace already exceeded the demand. The court concluded: "[E]ven though comparable claims are being mined, a new claim may be deemed unprofitable because the market has reached such a point of saturation that a new entrant can not make a profit." 733 F.2d 704, 708 (9th Cir. 1984). Commentators experienced in Mining Law have observed that it is difficult to reconcile Dredge Corp. with Baker. Jerry L. Haggard & J. Stanton Curry, *Recent Developments in the Law of Discovery*, 30 Min. L. Inst. 8-1, 8-20 (1984).

C. The IBLA's Response

Soon after Baker and McCall, IBLA decided United States v. Oneida Perlite Corp., 88 I.D. 772, 57 IBLA 167 (1981). In that case, the IBLA thoroughly analyzed and reaffirmed its continued recognition of the role of excess reserves. It pointed out that in Baker the Ninth Circuit had misunderstood the excess reserves rule as a new requirement, and not, as IBLA put it:

> merely a descriptive phrase used in certain circumstances to characterize deposits which are not "valuable" within the meaning of 30 U.S.C. § 22 (1976) because the claimant already possesses an ample supply of such mineral to satisfy his share of a limited market for years into the future, and the additional deposits so described

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[6] 733 F.2d at 706, 706 n.3, 707, 707 n.6.

> are consequently of no economic value because they cannot be presently marketed at a profit.

88 I.D. at 796. The IBLA reaffirmed its long line of decisions holding that whether a particular deposit is "valuable" depends upon a consideration of the quantity of claimant's other holdings, market limitations, claimant's share of market, as well as the magnitude and sources of other supplies to the same market. 88 I.D. at 788. It pointed out that McCall and Baker illustrated opposite sides of the same coin. That is, whether the claimed land is characterized as non-mineral in character, as in McCall, or the mineral deposit on that land is characterized as "excess reserves," as in Baker, "these expressions relate to whether or not there has been a qualifying discovery of a valuable deposit of mineral on that particular claim or portion thereof." 88 I.D. at 795. Thus, in IBLA's view, McCall in effect sharply limited Baker to the facts as the Ninth Circuit had mistakenly understood them.

D. The BLM's Response

BLM's initial response to this conundrum was to issue an instruction memorandum that simply said Baker must be followed and inquiries into "excess reserves" would no longer be made. IM 82-247 (July 1982). That memorandum addressed neither the Ninth Circuit's decision in McCall nor the IBLA's response in Oneida Perlite and was, therefore, rescinded five months after it was issued. IM 83-124 (Nov. 24, 1982).

In the years since, the BLM and the IBLA have followed Oneida Perlite in practice, without detailed guidance. The BLM Mineral Examiners' Handbook, for example, now provides for examining whether there are "unmarketable reserves" (excess reserves), citing to Oneida, McCall, Baker and Williamson. Mineral Examiners' Handbook, Ch. 5, § 8, ¶ C ("Unmarketable Material"). IBLA has referred favorably to the excess reserves principle since its opinion in Oneida Perlite. See Yankee Gulch Joint Venture v. BLM, 113 IBLA 106, 115 n.6 (1990); United States v. Foresyth, 100 IBLA 185, 252 (1987); United States v. Swanson, 93 IBLA 1, 18 n.8 (1986). In 1984, BLM did consider proposing standards for applying the excess reserves principle, but never completed the job.

CONCLUSION

For either of the following two reasons, the Baker decision does not preclude the BLM from continuing to examine whether the presence of "excess reserves" affects the validity of mining claims. First, by its own terms Baker's reach is confined to situations where BLM has conceded that a claim is valid, but refuses to patent the claim on the ground that excess reserves are present. This does not describe the usual case. So long as BLM limits its inquiry into excess reserves to situations where it has not found a discovery, therefore, it can apply the excess reserves principle and still meet the requirements of Baker. An administrative record that clearly shows that the inquiry into the quantity of reserves is for the purpose of ascertaining whether the claimant has satisfied the present marketability requirement, either on a particular claim or 10 acre tract on a placer claim, will avoid the situation that troubled the court in Baker.

Second, the Baker decision has been sharply limited if not implicitly overruled by the Ninth Circuit's subsequent decision in McCall, as understood and applied by the Department for more than a decade. Following McCall, inquiries into excess reserves can continue to be made when examining whether the claimed land is "mineral in character."

Against this background, BLM may consider developing guidance for mineral examinations where an analysis of present marketability could be affected by the presence of excess reserves. In doing so, BLM must recognize that "each case must be judged on its own facts." Solicitor's Opinion, M-36642, *supra* at 146, and that a number of variables could affect the determination of what quantity of material should be considered excess because, as the Ninth Circuit said in Melluzzo, it would "so overwhelm[] the existing demand . . . [that it] cannot be said to be marketable at a profit." 534 F.2d at 864. Among the factors to be considered are the particular mineral involved (each mineral having its own market demand, marketing and financing arrangements), changing market conditions, availability of substitute materials, and advancements in technology.

We are happy to work with you to craft uniform guidelines describing factors that a mineral examiner should consider when confronted with a mineral deposit of widespread occurrence. Such guidelines would expedite consideration of these cases and ensure consistency in the treatment of the marketability test among the BLM state offices.

This Opinion was prepared with the substantial assistance of Sam Kalen and Sharon Allender in the Solicitor's Office.

John D. Leshy
Solicitor

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D. C. 20240

August 17, 1998

In Reply Refer To:
3802/3809(WO-320) P
Ref. IM No. 98-74

EMS TRANSMISSION 8/19/98
Instruction Memorandum No. 98-154
Expires: 09/30/99

To: All State Directors

From: Assistant Director, Minerals, Realty and Resource Protection

Subject: Solicitor's Opinion Regarding Legal Limitation on Millsite Acreage in Plans of Operations

PROGRAM AREAS: Mining Law Administration, Surface Management Land and Realty, Land Use Authorizations

ISSUE: How should the Bureau of Land Management (BLM) apply the Solicitor's Opinion regarding the legal limitation on millsite acreage to plans of operations?

BACKGROUND: On November 7, 1997, the Solicitor issued a legal opinion entitled Limitations on Patenting Millsites under the Mining Law of 1872, M-36988. The Secretary concurred in the opinion on November 12, 1997. A copy of the Opinion has been sent to you as an attachment to WO IM 98-74.

In the opinion, the Solicitor cautions the BLM not to "approve plans of operations which rely on a greater number of millsites than the number of associated claims being developed unless the use of additional lands is obtained through other means." In other words, the millsite acreage included in a plan of operations should not exceed five acres of millsite lands for each associated lode or placer claim within the plan area. The opinion states further that there are "at least two other ways that mining operators can gain the use of federal lands for millsite purposes," either "by exchange under § 206 of the Federal Land Policy and Management Act (FLPMA), and by permits and leases under Title III of FLPMA." Section 206 authorizes the Secretary to exchange tracts of public land for interests in land of equal value elsewhere when "the public interest will be well served by making that exchange." 43 U.S.C. § 1716(a). Under section 302(b), the Secretary may issue permits for the "use, occupancy and development of the public lands" for various purposes. 43 U.S.C. § 1732(b). We have had further discussions with the Solicitor's Office on the options available to us and will implement the following policy:

POLICY/ACTION: The BLM may continue to use 43 C.F.R. Part 3809 to authorize all pending and future mining operations which rely on millsite acreage in the manner described below:

Lands Withdrawn from the Operation of the Mining Law:

If lands on which the plan is proposed are withdrawn from the operation of the Mining Law, you should not approve proposed plans of operations which rely on millsite acreage which is in excess of the legal limit of five acres per associated lode or placer claim within the plan area. You must not approve the plan until the claimant relinquishes the excess millsite acreage and submits a plan which uses the correct millsite acreage. The claimant should work with the BLM to choose which millsites it will relinquish. If the claimant refuses to relinquish the excess millsite acreage, you must contest those millsites. You should use your best judgment in deciding which millsite acreage to contest by considering the proposed and actual uses and the claimant's compliance with all other requirements under the Mining Law for the millsite acreage. Contest excess millsites using the following charge in the contest complaint:

The (name of millsites and BLM serial numbers) are invalid because they are in excess of the millsite acreage allowed by the Mining Law (30 U.S.C. 42 and R.S. §2337) for the associated mining claims.

Lands Open to the Operation of the Mining Law:

If the lands on which the mining plan of operation is proposed are open to the operation of the Mining Law and you determine that the plan does not unacceptably conflict with other significant resources within the plan area, e.g., cultural sites or properties or sacred sites, you need not evaluate the millsite-acreage-to-mining-claim ratio involved in the plan. When you approve a plan of operations under 43 CFR § 3809.1-6, the approval, in effect, serves as a surface use permit under section 302(b) of the FLPMA, as well as authorization under the Mining Law. To the extent the plan does not unacceptably conflict with other resources within the plan area, your plan approval under 3809 serves as a permit to use even those lands on which millsites are located in excess of the acreage limitation in the Mining Law.

If the lands on which the plan is proposed are open to the operation of the Mining Law but you determine that the operator's proposed plan would cause unacceptable resource conflicts, you must evaluate the mill-site-acreage-to-mining-claim ratio involved in the plan. By doing so, you will be able to exercise greater discretion to protect other resources by negotiating with the operator regarding the uses within the plan area for millsite purposes.

To exercise this discretion, determine the amount of millsite acreage which is in excess of that allowed by the Mining Law. Then, inform the operator of the millsite acreage limitation and ask the operator to amend the proposed plan of operations by moving proposed surface uses away from the excess millsite acreage which covers the resource conflict areas. If the operator agrees to remove proposed surface uses from the resource conflict areas, it should amend the plan of operations to exclude the excess millsite acreage which covers the conflict areas from the boundaries of the plan area before you decide whether to approve the plan.

If the operator refuses to remove proposed surface uses from the resource conflict areas, you should contest the excess millsites, using your best judgment in deciding which millsite acreage to contest by considering the resource conflict areas, the proposed and actual uses of the millsite acreage and the claimant's compliance with all other requirements under the Mining Law for the millsite acreage. Contest excess millsites using the charge described above.

In all cases, your plan approvals must state expressly that the approval does not warrant the validity of the mining claims or millsites within the plan area. Include the following statement in each plan of operation: "BLM's approval of this plan of operations does not imply or otherwise serve as a recognition of the validity of any mining claim or millsite to which it may apply."

TIME FRAME: This instruction is effective immediately upon its receipt in your office.

BUDGET IMPACTS: None

MANUAL SECTIONS AFFECTED: Manual Section 3809.

COORDINATION: If particular plans of operations present questions not addressed here, please contact the Washington Office (WO 300 or WO 320).

CONTACT: Brenda Aird, GM, Solid Minerals Group (WO 320) at 202-452-0351 or Rick Deery, Geologist, Solid Minerals Group (WO 320) at 202-452-0353.

Signed by:
Carson W. Culp
Assistant Director
Minerals, Realty and Resource Protection

Authenticated by:
Robert M. Williams
Directives, Records
& Internet Group, WO540

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
California State Office
Sacramento, California 95825-0451
(916) 978-4360
http://www.ca.blm.gov
May 27, 1998

In Reply Refer To:
3890(P)
(CA-920)

EMS TRANSMISSION: 5/27/98
Instruction Memorandum **No. CA 98-111**
Expires: 9/30/99

To: All Field Offices

From: Deputy State Director, Energy and Minerals

Subject: Procedures for Investigation of Mill Sites; Mineral Patent Applications

Program Area: Mining Law Administration; Mineral Investigation of Mill Sites

Issue: Ensure standard procedures are applied statewide in the proper investigation, adjudication, and preparation of mineral reports of mill site locations included in mineral patent applications in California.

Background: The current backlog of mineral patent applications includes a number of applications involving mill sites. On November 7, 1997, the Solicitor provided guidance on the limitations on mill site acreage that can be patented under the mining laws (Attachment 1). This guidance was directed to the field offices as policy under WO IM 98-74 dated March 12, 1998 (Attachment 2). Mill site policy explanation and direction was put forth by Karen Hawbecker, Solicitor, WO, during NTC training of CRME's dated April 20, 1998 (Attachment 3).

Under the Secretary's interpretation of the mill site provision of the mining laws, and WO policy, mill sites can only be clear listed for patent if included in an application for dependent lode or placer mining claim(s), or if associated with patented mining claims. Mill site acreage is limited to five (5) acres for each dependent mining claim that is included in a concurrent application, or patented previously under the mining laws. Mill sites and attendant acreage previously patented are included in the acreage limitations of the mill sites in the current application.

Policy: The guidance provided by the Solicitor and others, given in the Background section above, is to be followed. Mineral examiners should reference Special Publication (1996) Location and Patenting of Mining Claim and Mill Sites in California, pp. 14-17, 26-27, 62-63, and 69-70, regarding procedures for investigation of mill site applications.

Field Office Responsibility

Each field office is to ensure that mill site applications are completed in accordance with the above information. Mineral examiners assigned to mill site applications are to be certified under BLM policy (Manual 3064) and are to be familiar with and understand policy as directed to mineral patent applications including mill sites.

The mineral report will be sent to a Certified Review Examiner for technical review. After technical review and management acknowledgement has been completed, send the report to the Division of Energy and Minerals (CA-920).

State Office Division of Energy and Minerals

Actions related to a mill site report are processed in the State Office as follows: the Deputy State Director, Division of Energy and Minerals, and the mineral patent adjudicator. All reports on mill sites will be forwarded to the WO office for final review and adjudication.

Budget Implications: None

Coordination: James R. Evans, Senior Technical Mineral Specialist, Division of Energy and Minerals, (916) 978-4378.

Contact: As above under "Coordination."

Signed
Leroy Mohorich
Acting DSD, Energy and Minerals

Authenticated
AJ Ajitsingh
Records Management

3 - Attachments:
1 - Limitation on Patenting Mill sites (16 pp)
2 - Mineral Patents 4 pp)
3 - Mining Law Update (7 pp)

4-20-98

MINING LAW UPDATE

I. Solicitor's Opinion -- Limitations on Patenting Mill Sites under the Mining Law of 1872

☆ **BACKGROUND:** On November 1997, the Solicitor issued a legal opinion to the BLM Director, in which the Secretary concurred, regarding the amount of mill site acreage that an applicant may patent under the Mining Law. **The opinion states that an applicant may only patent up to five mill site acres for each of its previously or concurrently patented mining claims (lode or placer).** This does not require the Bureau to re-examine the validity of previously patented mining claims. However, if an applicant seeks to patent a mill site in reliance on a previously patented mining claim, the Bureau must ascertain that the applicant is using, or will properly use, the mill site acreage for mining and milling purposes and that the use is in some way connected to the patented claim. If the mill site is related to a mining claim which will be patented concurrently, the mill site acreage may be patented only if the mining claim for which the applicant has concurrently applied for patent is actually patented before, or at the same time as, the mill site acreage.

☆ HOW SHOULD YOU HANDLE PATENT APPLICATIONS WHICH INCLUDE MILL SITES?

A. Do the mill sites meet all other patenting requirements?

☞ 1. Continue to examine each grandfathered mineral patent application which includes mill site acreage as usual.

☞ 2. Review the eligibility of all of the mill sites included in each application to be sure they meet all other legal requirements including, but not limited to, the requirement that mill sites be non-mineral in character and the 2.5 acre rule, i.e., each 2.5 acre portion of a mill site must be used or occupied properly in order to qualify for patenting.

☞ 3. In the mineral report, state whether the mill sites in the patent application meet all other patenting requirements before addressing the mill site acreage restriction.

B. Does the mill site acreage exceed what the Mining Law allows?

☞ 1. In conjunction with a State Office mineral patent adjudicator, determine the number of the applicant's associated mining claims which have been previously patented or will be concurrently patented.

☞ 2. Multiply the number of associated mining claims by five in order to determine the number of mill site acres which may be patented.

☞ 3. With the help of a State Office mineral patent adjudicator, determine if the same applicant already received patents for other mill sites in association with the same mining claims.

☞ 4. Subtract the previously-patented mill site acreage from the total amount of mill site acreage allowed by the Mining Law for the number of associated mining claims which have been previously patented or will be concurrently patented.

☞ 5. After making these determinations, place into the summary section of the mineral report a table which identifies:

(a) the number of the applicant's associated mining claims which have been previously patented or for which a concurrent patent application is pending;

(b) the number of previously patented mill sites which are associated with the same mining claims;

(c) the consequent amount of mill site acreage in the application which may be patented; and

(d) previously issued patents by patent number, mineral survey number, number and type of mining claims and/or mill sites, date of patent, and patentee.

C. Drawing a conclusion

☞ It is possible that you could reach one of three conclusions regarding the mill site acreage which the applicant seeks to patent:

1. No Excess Mill Site Acreage

☞ If you conclude that the applicant seeks to patent mill sites which comply with all other applicable patenting requirements of the Mining Law, and the mill site acreage does not exceed the amount allowed by the Mining Law, your report should recommend that the Secretary patent all of the mill sites included in the application.

2. Partial Excess Mill Site Acreage

☞ (a) If you conclude that the applicant seeks to patent mill site acreage which partially exceeds the amount allowed by the Mining Law, your report should recommend the amount of mill site acreage which may be patented, as explained above.

☞ (b) In such cases, the State Office should not include a patent document or second half of the mineral entry final certificate in the application package when it is forwarded in the Secretarial Review process.

☞ (c) The BLM Director and the Solicitor will review the patent application package to determine first that all of the mill sites included in the application would be otherwise eligible for patenting.

☞ (d) The Solicitor's Office will then send a letter to the applicant listing the otherwise eligible mill site acreage and identifying the amount of mill site acreage which may be patented, in order to give the applicant an opportunity to choose the specific mill site acreage it would like patented.

☞ (e) After the applicant identifies the mill site acreage it would like patented, the Solicitor's Office will request that the appropriate State Office prepare a patent document and SHFC which reflect the chosen mill site acreage.

☞ (f) After the State Office sends the patent documents, the Solicitor's Office will forward them to the Secretary for final action along with a letter for the Secretary's signature rejecting the application, in part, as to the remaining mill site acreage.

3. All Excess Mill Site Acreage

☞ If you conclude that a patent applicant has previously patented other mill site acreage which equals or exceeds five times the number of the associated mining claims on which the applicant relies to seek the mill site patents under consideration, your report should recommend that the Secretary reject all of the mill sites in the patent application.

☆ **WHAT HAPPENS TO THE APPLICATIONS THAT ARE ALREADY IN THE SECRETARIAL REVIEW PROCESS NOW?**

☞ 1. BLM Headquarters and the Solicitor's Office will review all patent applications which are currently in the Secretarial Review Process to determine if they comply with the mill site acreage restrictions in the Mining Law.

☞ 2. The Solicitor's Office may contact mineral examiners for additional information to make a determination regarding the mill site acreage for which a patent is sought.

II. Solicitor's Opinion -- Entitlement to a Mineral Patent under the Mining Law of 1872

☆ **BACKGROUND:** On November 12, 1997, the Solicitor issued a opinion which dealt with the confusion and ensuing litigation surrounding when precisely a patent application was considered "complete" for purposes of establishing an entitlement to a patent. Specifically, **it concludes that an entitlement to a patent does not arise until the Secretary determines that the patent applicant has complied with all the terms and conditions entitling it to a patent under the Mining Law.**

☆ **THE OPINION RECOMMENDS THAT BLM:**

☞ 1. Modify its patent review process for new patent applications and those currently subject to the moratorium.

☞ 2. No longer accept the purchase price for patent applications until after a mineral examination is complete.

☞ 3. Eliminate the FHFC altogether.

☞ 4. Amend the BLM Manual and other policy statements to eliminate discussion of "equitable title" or "mineral entry" except as approved by the Solicitor's Office and formally rescind the BLM Manual to the extent it is contrary with the opinion.

☞ 5. Revise the regulations governing mineral patenting to more fully reflect the opinion.

☆ HOW DOES THIS OPINION AFFECT MINERAL EXAMS NOW?

☞ BLM Headquarters will be issuing an instruction memorandum which defines the dates to be used for determining an applicant's compliance with the Mining Law in light of this opinion and recent case law.

☞ Because the Interior Board of Land Appeals will apply the Whittaker decision in all patent application contests, the first date to be used for determining marketability is the date of the FHFC.

☞ The second date will be one of two possible dates --

(1) the date of the mineral examination or

(2) the date the applicant submits all remaining necessary information as requested by the examiner in order to allow the examiner to verify a discovery for mining claims or proper use and occupancy for mill sites. .

III. Patenting Litigation Report

☆ Independence Mining Co. v. Babbitt, 105 F.3d 502 (9th Cir. 1997).

Independence Mining Company (IMC) filed suit against Secretary Babbitt requesting the court to compel the Secretary to determine the validity of its patent applications and issue patents for the claims. At the time the lawsuit was filed, no FHFCs were signed for IMC's patent applications. With regard to the point at which a patent applicant establishes a right to a patent, the court stated:

> [W]e have recently held that rights to a patent do not vest upon the filing of the application if the Secretary contests the validity of the patent and thus delays its issuance. Swanson, 3 F.3d at 1350, 1354. We reasoned that '[u]ntil a patent is issued, the government has broad authority to manage the public lands,' because of the Secretary's broad plenary powers over those lands. Id. at 1352. In light of this broad power, we held that, until the patent actually issued, the government retained the authority to remove those lands from mining claims and patents. Id.
>
> In this case, unlike Swanson, the Secretary has not officially challenged the validity of the patents. Rather, the Secretary is in the process of determining the validity of the patents, which process is causing the delay challenged here. Because the Secretary is, in essence, in the process of determining whether he will challenge the patents' validity, Swanson's holding applies a fortiori in this case. In other words, **if rights to a patent**

do not vest pending challenge to its validity, no rights can vest before the Secretary has decided whether to contest the patent claim.

☆ **Cook v. United States, 37 Fed. Cl. 435 (1997).**

In creating the Jemez National Recreation Area on October 12, 1993, Congress cut off patenting, effective more than two years prior to enactment:

> "Notwithstanding any other provision of law, no patents shall be issued after May 30, 1991, for any location or claim made in the recreation area under the mining laws of the United States." Jemez National Recreation Area Act § 3(a)(1) (Jemez Act), 16 U.S.C. § 460jjj-2(a)(1) (1994).

Cook had filed a patent application for 23 mining claims in 1989, paid the purchase price, and received a FHFC on January 16, 1991, four months before the date set in the statute for the ban on patenting to take effect. Cook filed suit in the Court of Federal Claims arguing that the statute effected a taking of an alleged right to a patent. The Department argued that a vested property interest did not arise until there had been a final determination that the claimant had satisfied all of the requirements for the issuance of a patent. Because BLM had not completed a mineral examination and there had not been a final determination that the claimants were entitled to a patent, as of May 30, 1991, the Department argued that the claimants' right to patent had not yet vested, thus no taking occurred.

In denying the Department's motion for summary judgment, the court held that a claimant's valid existing right to a patent vests only once the claimant has completed all steps required to receive a patent under the Mining Law, including, among other things, filing a patent application. **The "existence of a property interest is based," the court stated, "on the applicant, prior to any change in the law, having done all that is required of it under existing law to receive title to public land, including the filing of all papers and, where applicable, the payment to the United States of the purchase price for a patent."**

The court rejected the government's view that a right to a patent does not vest until the government completes its review of the application and makes a positive determination. However, the Cook opinion is not a final judgment in the case. The parties have filed supplemental briefs and a further decision is expected regarding whether Cook had done all that is required under the Mining law to receive title prior to the change in the law.

☆ **Mt. Emmons Mining Co. v. Babbitt, 117 F.3d 1167 (10th Cir. 1997).**

Mt. Emmons paid the purchase price but the FHFC was not signed before the patent funding moratorium went into place. Mt. Emmons challenged the application of the moratorium to its patent application. The Tenth Circuit concluded that if the Secretary determines that the application is complete, "in that the applicant has complied with all requirements for applying for a patent," then the application is not subject to the moratorium. The court acknowledged that an application would not be complete so as to qualify for continued processing if the purchase price was not paid prior to enactment of the moratorium. In addition, the court indicated that determining whether an applicant had complied with the paper requirements of 30 U.S.C. § 29 does not require the Secretary to determine whether an applicant is entitled to a patent.

As a result of this decision, the Department is processing eight additional patent applications -- the Mt. Emmons application and seven other similarly-situated applications.

IV. Mining Law Reform Efforts

☞ Committee hearing scheduled for April 28, 1998. Three mining law reform bills will be discussed.

MARCH 3, 1849

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D. C. 20240

March 12, 1998

In Reply Refer To:
3864/3860 (WO 320)P
Affects MS 3860 &
MS 3890

EMS Transmission 3/17/98
Instruction Memorandum 98-74
Expires: 09/30/99

To: All State Directors
Director, National Training Center

From: Assistant Director, Minerals, Realty, and Resource Protection

Subject: Patenting of Mill Sites; Limitations on Acreage Eligible for Patent

Program Area: Mining Law Administration; Mineral Patents

Issue: How Much Non-mineral Land is Eligible for Mineral Patent as a Mill Site Under 30 U.S.C. 42(a) and (b)?

Background: In November 1997, the Solicitor issued a legal opinion to the BLM Director, in which the Secretary concurred, regarding the amount of mill site acreage that an applicant may patent under the Mining Law. The opinion states that an applicant may only patent up to five mill site acres for each of its previously or concurrently patented mining claims (lode or placer). This does not require the Bureau to re-examine the validity of previously patented mining claims. However, if an applicant seeks to patent a mill site in reliance on a previously patented mining claim, the Bureau must ascertain that the applicant is using, or will properly use, the mill site acreage for mining and milling purposes and that the use is in some way connected to the patented claim. If the mill site is related to an unpatented mining claim, the mill site acreage may be patented only if this mining claim for which the applicant has concurrently applied for patent is actually patented before, or at the same time as, the mill site acreage.

Policy: The Bureau will implement the Solicitor's mill site opinion in the following way:

I. Patent Applications in Secretarial Review Process

The BLM Headquarters Office and the Solicitor's Office will review all patent applications which are currently in the Secretarial Review Process to determine if they comply with the mill site acreage restrictions in the Mining Law. The Solicitor's Office may contact mineral examiners for additional information to make a determination regarding the mill site acreage for which a patent is sought.

II. Grandfathered Patent Applications in Field

A. Mineral Examiner Review

Each grandfathered mineral patent application which includes mill site acreage should continue in the examination process as usual. The mineral examiner should continue to review the eligibility of all of the mill sites included in each application to be sure they meet all other legal requirements including, but not limited to, the requirement that mill sites be non-mineral in character and the 2.5 acre rule, i.e., each 2.5 acre portion of a mill site must be used or occupied properly in order to qualify for patenting. In the mineral report, the examiner should state whether the mill sites in the patent application meet all other patenting requirements before addressing the mill site acreage restriction.

The mineral examiner should then review the application to determine if the otherwise qualified mill site acreage is in excess of what the Mining Law allows. The mineral examiner should, in conjunction with a State Office mineral patent adjudicator, determine the allowable mill site acreage by first determining the number of the applicant's associated mining claims which have been previously patented or will be concurrently patented. The mineral examiner should then multiply the number of associated mining claims by five in order to determine the number of mill site acres which may be patented. With the help of a State Office mineral patent adjudicator, the mineral examiner should then determine if the same applicant already received patents for other mill sites in association with the same mining claims. The examiner should subtract the previously-patented mill site acreage from the total amount of mill site acreage allowed by the Mining Law for the number of associated mining claims which have been previously patented or will be concurrently patented.

After the mineral examiner makes these determinations, he or she should place into the summary section of the mineral report a table which identifies: (1) the number of the applicant's associated mining claims which have been previously patented or for which a concurrent patent application is pending; (2) the number of previously patented mill sites which are associated with the same mining claims; and (3) the consequent amount of mill site acreage in the application which may be patented. The mineral examiner should identify previously issued patents by patent number, mineral survey number, number and type of mining claims and/or mill sites, date of patent, and patentee.

It is possible that the mineral examiner could reach one of three conclusions regarding the mill site acreage which the applicant seeks to patent:

1. No Excess Mill Site Acreage

If the mineral examiner concludes that the applicant seeks to patent mill sites which comply with all other applicable patenting requirements of the Mining Law, and the mill site acreage does not exceed the amount allowed by the Mining Law, the mineral examiner's report should recommend that the Secretary patent all of the mill sites included in the application.

2. Partial Excess Mill Site Acreage

If the mineral examiner concludes that the applicant seeks to patent mill site acreage which partially exceeds the amount allowed by the Mining Law, the mineral examiner's report should recommend the amount of mill site acreage which may be patented, as explained above. In such cases, the State Office should not include a patent document or second half of the mineral entry final certificate (SHFC) in the application package when it is forwarded in the Secretarial Review process.

The BLM Director and the Solicitor will review the patent application package to determine first that all of the mill sites included in the application would be otherwise eligible for patenting. The Solicitor's Office will then send a letter to the applicant listing the otherwise eligible mill site acreage and identifying the amount of mill site acreage which may be patented, in order to give the applicant an opportunity to choose the specific mill site acreage it would like patented.

After the applicant identifies the mill site acreage it would like patented, the Solicitor's Office will request that the appropriate State Office prepare a patent document and SHFC which reflect the chosen mill site acreage. After the State Office sends the patent documents, the Solicitor's Office will forward them to the Secretary for final action along with a letter for the Secretary's signature rejecting the application, in part, as to the remaining mill site acreage.

3. All Excess Mill Site Acreage

If the mineral examiner concludes that a patent applicant has previously patented other mill site acreage which equals or exceeds five times the number of the associated mining claims on which the applicant relies to seek the mill site patents under consideration, the mineral examiner's report should recommend that the Secretary reject all of the mill sites in the patent application. Cases of this nature shall also be forwarded for Secretarial Review and final action.

Budget Implications: None.

Coordination: Roger Haskins, Senior Specialist for Mining Law Adjudication, Solids Group at (202)-452-0355.

Contact: Roger Haskins, as above.

Signed by:	Authenticated by:
Carson W. Culp	Robert M. Williams
Assistant Director	Directives, Records
Minerals, Realty, and Resource Protection	& Internet Group,WO540

1 Attachment
    1 - Opinion (16 pp)

United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

NOV - 7 1997

6-1-98

Serialized M-36988

Memorandum

To: Director
Bureau of Land Management

From: Solicitor

Subject: Limitations on Patenting Millsites under the Mining Law of 1872

I. Introduction and Summary

Since adoption of Secretarial Order 3163 in March 1993, my office has been reviewing patent applications under the Mining Law of 1872. We have learned during these reviews that a number of applicants seek to patent more than one "dependent" millsite per patented mining claim (hereinafter "multiple millsites").[1]

These applications appear to be at variance with the statutory text and a body of administrative and judicial decisions. Therefore, with the assistance of the Bureau of Land Management's Deputy Director, an informal survey was conducted of BLM's state offices. The survey revealed that BLM has, on occasion, issued patents for more than one millsite associated with only one mining claim.[2] There has never been, so far as we can determine, a written legal opinion addressing the legality of this practice.[3]

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[1] There are two types of millsites: (1) "dependent" or "associated" millsites, which are used for mining or milling purposes in connection with a specific mining claim, and (2) "independent" or "custom" millsites, which are quartz mills or reduction works that service mining operations. 30 U.S.C. § 42(a). Dependent millsites are by far the more common type. They can be used not only for mills, but for any number of purposes related to milling or mining. Charles Lennig, 5 L.D. 190 (1886).

[2] BLM's survey responses revealed no general or uniform policy or practice among the BLM State Offices on this question, nor did it indicate any precise date on which multiple millsite applications began to be entertained. The Colorado State Office reported, for example, that it first issued a multiple millsite patent in 1984, to Homestake Mining Company. The Idaho State Office reported that, while 178 patents were issued between 1950 and 1985, only eleven involved millsites of any kind, and the first patent for multiple millsites in Idaho was apparently issued to the Thompson Creek molybdenum mine in 1985. The Montana State Office reported suggestions from discussions with retired mineral examiners that multiple millsites may have been patented as early as the 1950s. But the

My Office has closely examined these questions. The Mining Law of 1872 provides that only one millsite of no more than five acres may be patented in association with each mining claim.[4] However, Secretarial decisions indicate that multiple millsites may be patented with a lode or placer claim, provided that the total area covered by these millsite claims does not exceed five acres (e.g., one millsite claim for two acres, and another millsite claim for three acres).[5] I believe such decisions can be defended, and therefore confirm that while only a total of five acres per lode or placer claim may be patented as a millsite, that five acres may be broken up into more than one millsite claim.

Because the statute does not support issuing patents for millsite claims totalling more than five acres per placer or lode claim, the Department should reject those portions of millsite patent applications that exceed this acreage limitation. In addition, the Bureau should not approve plans of operation which rely on a greater number of millsites than the number of associated claims being developed unless the use of additional lands is obtained through other means.

Our confirmation of the limits on millsite patenting may to some extent limit the acquisition of federal land for milling and mining purposes under the Mining Law. There are, however, at least two other ways that mining operators can gain the use of federal land for millsite purposes. These are by exchange under § 206 of the Federal Land Policy and Management Act (FLPMA), and by permits and leases under Title III of FLPMA.[6] We understand that

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Montana Office also reported on all of the millsite patents it had issued since 1975, and in only two instances, in 1980 and 1987, did it patent multiple millsites.

[3] The Reno Field Solicitor wrote a memorandum dated August 17, 1960 to the BLM State Office in Phoenix that discussed whether millsites can be used to dump tailings, and whether a single millsite patent application can cover three different millsites totaling fourteen acres, but did not directly address the issue discussed here.

[4] There are other ways the Mining Law limits (and possibly even prohibits) obtaining federal land for millsite purposes. The Mining Law requires that millsites be located only on non-mineral land that is not contiguous to the vein or lode. Depending upon the geology and terrain, there simply may be no federal land in the vicinity of the mineral claim that meets these requirements.

[5] These decisions are discussed in Part II.D. below.

[6] Section 206 authorizes the Secretary to exchange tracts of public land for interests in land of equal value elsewhere when "the public interest will be well served by making that exchange." 43 U.S.C. § 1716(a). Under section 302(b), the Secretary may issue permits for the "use, occupancy and development of the public lands" for various purposes. 43 U.S.C.

both exchanges and permits have been used in the past by mining companies for ancillary facilities in lieu of millsites.[7] Several exchanges have recently been completed or are in negotiation. Nothing in the Mining Law or in this Opinion limits the use of those other authorities to obtain land for use in locatable mining operations.

Nevertheless, there are a number of major differences between the use of these other authorities and the millsite provision of the Mining Law. First, the payment to the federal treasury from a millsite patent applicant is fixed by statute ($5.00 per acre for a millsite associated with a lode claim; $2.50 per acre for a millsite associated with a placer claim), while payments under FLPMA are based on fair market value. Second, issuance of millsite patents is not discretionary once all the statutory requirements for patenting have been met, while FLPMA-authorized exchanges and permits are discretionary. Third, fee title may be acquired by the operator through either exchanges or millsite patents, but a Title III lease creates only a possessory interest in the land and a Title III permit conveys no possessory interest. 43 C.F.R. §§ 2920.1-1(a),(b).

II. The Mining Law's Language and Legislative History, Together With Departmental Decisions, Restrict Millsite Patents to a Maximum of Five Acres Per Associated Mining Claim.

A. The plain language of the Mining Law indicates that only one five-acre millsite per mining claim may be patented.

The Mining Law provides that a millsite may be patented as follows (emphasis added):

> (a) Vein or lode and millsite owners eligible
>
> Where nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location made on and after May 10, 1872 of such nonadjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by sections 21, 22 to 24, 26 to 28, 29,

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§ 1732(b). Under certain circumstances, consideration also may be given to the grant of a right-of-way under Title V of FLPMA. See 43 U.S.C. § 1761(a)(7).

[7] In addition, the Colorado State Office reported that, prior to its repeal under FLPMA, the Small Tract Act was used to issue a patent to a mining operation in lieu of a millsite patent. See 43 U.S.C. § 682a-e (repealed Pub. L. 94-579, Title VII, § 702, 90 Stat. 2787).

> 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of Title 43 for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill site, as provided in this section.
>
> (b) Placer claim owners eligible
>
> Where nonmineral land is needed by the proprietor of a placer claim for mining, milling, processing, beneficiation, or other operations in connection with such claim, and is used or occupied by the proprietor for such purposes, such land may be included in an application for a patent for such claim, and may be patented therewith subject to the same requirements as to survey and notice as are applicable to placers. No location made of such nonmineral land shall exceed five acres and payment for the same shall be made at the rate applicable to placer claims which do not include a vein or lode.

30 U.S.C. § 42.[8]

Paragraph (a), which applies to millsites for lode claims and to custom millsites, begins by describing land that is: (1) non-mineral; (2) not contiguous to the vein or lode; and (3) used or occupied by the proprietor of the vein or lode for mining or milling purposes. Paragraph (b), which applies to millsites for placer claims, is slightly more specific, allowing non-mineral land that is both "needed" as well as "used or occupied" for mining or milling in connection with "a placer claim." [9]

The statute imposes a limitation that only a single five-acre millsite may be claimed in connection with each mining claim. With regard to lode claims, subsection (a) states that "such" land may be "embraced and included in" the application for the vein or lode with which it is associated. 30 U.S.C. § 42(a). Further, the subsection requires that "no location" of "such" land shall exceed five acres. Id. The use of the word "such" indicates that the same parcel of land that meets the other requirements for a millsite claim is the land that is being limited to a five-acre area. See Denver Union Stock Yard Co. v. Producers Livestock Marketing Ass'n, 356 U.S. 282, 285-86 (1958) (defining "such stockyard" used in Stockyard's Act); Black's Law Dictionary 1432 (6th ed. 1990) ("such" defined as, among other things, "[i]dentical with, being the same as what has been mentioned").

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[8] As originally enacted in 1872, this section contained only what is now paragraph (a), and thus allowed millsites to be patented only in connection with vein or lode claims, or as independent quartz mills or reduction works. Act of May 10, 1872, § 15, 17 Stat. 96, codified as R.S. 2337. It was not until 1960 that Congress amended the statute to add paragraph (b), allowing millsites to be patented in connection with placer claims. Pub. L. No. 86-390, 74 Stat. 7 (1960).

[9] Although the body of law governing "use and occupancy" of millsites is beyond the scope of this Opinion, it is important to note that the application for a millsite patent must show present use, by proper means, of each 2 1/2 acre portion of each millsite. See United States v. Swanson, 93 IBLA 1 (1986); 34 IBLA 25 (1978); 14 IBLA 158 (1974). Generally, whether a millsite is "presently in use" is determined at the time of review of the application (by BLM or, on appeal, by the IBLA), and not at the time the application is filed. See Utah Int'l Inc., 45 IBLA 73 (1980). Similarly, the lode or placer claim must be valid at the time the millsite application is reviewed for the millsite to be valid. Pine Valley Builders, 103 IBLA 384 (1988).

Similarly, a millsite associated with a placer claim may be "included in an application for a patent for such claim, and may be patented therewith" and no location of "such" land may exceed five acres. 30 U.S.C. § 42(b). Thus, the statute maintains the link between mining and millsite claims and the five-acre limitation with regard to placer claims as well.[10]

Nothing in the statutory language suggests that the five-acre size restriction on millsites may be avoided by locating multiple millsites in connection with a single mining claim. Construing the statute to permit multiple millsites without regard to the aggregate size limit would vitiate the five-acre statutory limit on the size of millsites. This would violate a fundamental rule of statutory construction: to give effect to all of a law's provisions. See, e.g., United States v. Menasche, 348 U.S. 528 (1955); Sutherland, *Statutory Construction* § 46.06 (5th ed. 1992).

B. The Bureau of Land Management's regulations limit millsite acreage.

The first regulations issued by the General Land Office in 1872 stated unequivocally: "The law expressly limits mill-site locations made from and after its passage to five acres, but whether so much as that can be located depends upon the local customs, rules, or regulations." Mining Regulations § 91, June 10, 1872, Copp, U.S. Mining Decisions 270, 292 (1874) (emphasis in original).[11]

The current BLM regulation on millsite patenting continues to refer to the five acre limit, and is fairly interpreted to prohibit locating more than one five-acre millsite in connection with each mining claim:

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[10] A dependent millsite must be patented either contemporaneously with the associated mining claim or by an application after the associated mining claim has been patented. Pine Valley Builders, Inc., 103 IBLA 384 (1988); Eclipse Mill Site, 22 L.D. 496 (1896); see also 43 C.F.R. § 3864.1-1(b). A dependent millsite may not be patented prior to the issuance of a patent on the associated mining claim. Union Phosphate Co., 43 L.D. 548 (1915).

[11] By 1907, for reasons that are not apparent, the Land Office had dropped this paragraph from the regulations.

> [P]arties holding the possessory right to a vein or lode claim, and to a piece of nonmineral land not contiguous thereto for mining or milling purposes, not exceeding the quantity allowed for such purpose by R.S. 2337 . . . may file in the proper office their application for a patent, which application . . . may include, embrace, and describe . . . such noncontiguous millsite.

43 C.F.R. § 3864.1-1(b) (emphasis added).[12]

The regulation speaks of millsites exclusively in the singular: a party holding the right to "a" mining claim and "a piece of nonmineral land" may apply for a patent, and shall describe "such . . . millsite" in the application. There is no suggestion in the regulation that more than one millsite may be patented in connection with a mining claim.

BLM's Handbook for Mineral Examiners, on the other hand, currently provides that "[a]ny number of millsites may be located but each must be used in connection with the mining or milling operation." BLM Handbook for Mineral Examiners, H-3890-1, Ch. III § 8 (Rel. 3/17/89). The handbook cites no authority for this interpretation.

This provision may come from a handbook that is often used by BLM mineral examiners: Terry Maley's *Handbook of Mineral Law* (5th ed. 1993).[13] In this handbook Maley, himself a BLM mineral examiner, states:

> There is no specific direction in the Federal law or regulations concerning how a millsite may be located or how many mill sites may be located. . . . [T]here is no limitation to the number of mill sites that may be located as long as each mill site is properly "used or occupied" for "mining or milling purposes."

Id. at 191.[14] No authority is cited for these statements. There is no legal analysis or discussion of the legislative history, regulations and caselaw related to this provision. These assertions may, however, explain why some BLM field offices apparently have, in recent years, ignored the limitations of the Mining Law and BLM's regulations.

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[12] This language dates, with little alteration, from the earliest circulars issued by the General Land Office following enactment of the 1872 Mining Law. See Mining Regulations §§ 86-92, June 10, 1872, Copp, U.S. Mining Decisions 270, 292 (1874); Mining Regulations §§ 71-77, April 1, 1879, Copp, U.S. Mineral Lands 43, 55 (1881); Mining Regulations §§ 63-67, Dec. 15, 1897, 25 L.D. 561, 581 (1898); Mining Regulations §§ 61-65, July 26, 1901, 31 L.D. 453, 485 (1901); Mining Regulations § 61-65, May 21, 1909, 37 L.D. 728, 771 (1909); 43 C.F.R. §§ 185.67-185.70 (1938); 43 C.F.R. §§ 3460.1-3460.4 (1969).

[13] The Alaska State Office's response to BLM's survey reported that Maley's book is "consulted for technical direction" in that Office.

[14] An earlier edition of Maley's handbook contained a more watered-down version of this statement. The second edition, published in 1979, stated only: "There is no information in the federal law or regulations concerning how a millsite may be located or how many

C. The legislative history of the 1960 amendment to the Mining Law indicates that no more than five acres of land per mining claim may be patented for millsite purposes.

In 1960, Congress amended the Mining Law to permit location of millsites in connection with placer claims, adding subsection (b) to 30 U.S.C. § 42. Pub. L. No. 86-390, 74 Stat. 7 (1960). The legislative history of that amendment makes clear that Congress and the Department understood both the existing statute and the amendment to permit only one five-acre millsite in connection with each mining claim.[15]

The amendment was introduced in 1959 as S. 2033. 105 Cong. Rec. 8734 (1959). As originally proposed, the bill would have allowed a millsite location of "ten acres for each individual claimant" in connection with a placer claim. In comments on the bill, the Department recommended S. 2033 be enacted, with amendments:

> As it is written, [S. 2033] would permit the location of nonmineral land to the extent of "ten acres for each individual claimant." The acreage permitted under section 2337 as it now exists is limited to 5 acres, and we do not see the need for permitting the location of greater nonmineral land acreage for placer claims than for the other types of mining claims. Moreover, permitting the location of 10 acres "for each individual claimant" would be most undesirable since it would permit a number of individual claimants to band together to receive far more than 10 acres at one site. Accordingly, we recommend that the bill be amended . . . by the deletion of the word "ten" and the substitution therefore of the word "five", and by the deletion of the words "for each individual claimant".

Letter to Chairman, Senate Committee on Interior and Insular Affairs from Assistant Secretary of the Interior Roger Ernst, July 20, 1959, reprinted in S. Rep. No. 904, 86th Cong., 1st Sess., at 3.

In its report on the bill, the Senate Interior Committee accepted the Department's recommendations, stating:

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millsites may be located." Maley, *Handbook on Mineral Law*, at 179 (2nd ed. rev. 1979).

[15] A review of the legislative history of the 1872 Mining Law reveals no discussion of the acreage limitation in the millsite provision.

> [T]he word "ten" was stricken and the word "five" inserted in lieu thereof. The purpose of this amendment is to restrict the area of a millsite in conjunction with a placer claim to 5 acres of land to make it conform with the allowable millsite acreage for lode claims which has been the statutory requirement since 1872. . . .
>
> [T]he words "for each individual claimant" were stricken so as to impose a limit of one 5-acre millsite in any individual case preventing the location of a series of 5-acre millsites in cases where a single claim is jointly owned by several persons. . . .
>
> In essence, S. 2033 merely grants to holders of placer claims the same rights to locate a 5-acre millsite as has been the case since 1872 in respect to holders of lode claims, and the committee unanimously urges enactment.

Id. at 2. The Senate and House passed the bill as amended, and the President signed it on March 18, 1960. 105 Cong. Rec. 18741 (1959); 106 Cong. Rec. 6057 (1960).

This legislative history demonstrates that Congress understood both the amendment in 1959 and the existing Mining Law to permit location of only one five-acre millsite per mining claim. The Senate Interior Committee removed the phrase "for each individual claimant" from the bill for the express purpose of preventing the aggregation of multiple five-acre millsites by a mining claimant, and made it clear that the Committee understood this to be consistent with the existing law applicable to millsites associated with lode claims.

D. The Department's decisions have consistently limited the number of acres patented as millsites to five acres per associated mining claim.

As noted above, the statutory language and legislative history of the Mining Law indicate that only one five-acre millsite claim per mining claim may be patented. However, case law in the form of the Department's own administrative decisions[16] indicates that more than one millsite claim may be patented, so long as they collectively do not cover more than a total of five acres. These decisions are faithful to the overall five-acre limitation and therefore, it is not necessary to disturb them.

Only one reported case, decided shortly after the Mining Law was enacted, directly addresses the question of how many millsites may be located in connection with a mining claim. In

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[16] Very few reported federal or state court cases concern the millsite provision of the Mining Law, and none addresses how many millsites may be located. Swanson v. Babbitt, 3 F.3d 1348 (9th Cir. 1993), one of the few federal cases concerning the millsite provision, involved whether a mining claimant had a vested right to patents on millsites at the time Congress prohibited further patenting in a recreation area.

J.B. Hoggin,[17] 2 L.D. 755 (1884), the General Land Office had cancelled the entry of one of two millsites located in connection with one lode claim, holding that the law did "not contemplate that more than one millsite or tract of land for milling purposes may be embraced in an application for patent for a lode claim." Id. One of the millsites covered four and one-half acres, and the other one-half acre. Id.

On appeal, the Secretary framed the question presented as "whether, keeping within the restriction of 5 acres of nonmineral land, more than one mill site may be embraced in an application for a vein or lode and patented therewith." Id. The Secretary held that:

> [S]ince the amount in both locations does not exceed five acres, I think in this instance both mill-site entries should be permitted to stand. . . . I think the practice under [R.S. 2337] should be to allow the entry of such number of pieces, within the restriction of five acres, as may appear to be necessary for such mining and milling purposes.

Id. at 756. The Secretary made it clear, therefore, that a single mining claim could support multiple millsite locations only where the combined area of the millsites was five acres or less. See also Yankee Mill Site, 37 L.D. 674, 677 (1909) (Mining Law contains "provision for an additional area, 'for mining or milling purposes,' . . . with a limitation by acreage and not by dimensions"); United States v. Collord, 128 IBLA 266, 314 (1994) (Burski, J., concurring) (millsite provision of Mining Law "permits only a single appropriation of additional land, not to exceed 5 acres, per mining claim.").[18]

In 1891, the Department reaffirmed the five-acre millsite limit. Hecla Consolidated Mining Co., 12 L.D. 75 (1891), involved an application under the "second clause" or "custom" millsite provision of R.S. 2337 for patent on a millsite used for storage of tailings in connection with adjacent millsites that contained a number of charcoal kilns used for smelting. The additional millsite was not used in connection with any specified claim, and hence did not qualify as a dependent millsite under the first clause of R.S. 2337. Id. at 77. The applicants sought the site because the area of the existing sites was "not sufficient for their purposes." Id. The Secretary held that General Land Office's rejection of the application was proper, stating:

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[17] The case name is spelled "Hoggin" in the caption, while the claimant's name is spelled "Haggin" in the text of the decision.

[18] Collord appealed the IBLA's decision to the district court. The court remanded the case to the IBLA to determine the validity of two millsites and to assess whether occupancy had been established on the millsites. See Collord v. Department of the Interior, No. 94-0432-S-BLW, at 5-11 (D.Idaho, Aug. 27, 1996). On remand, the IBLA may be forced to address whether Collard is inappropriately seeking to patent millsites acreage in excess of the statutory limitation, because only one valid lode claim remains in Collord's application.

> The law makes no provision for acquiring land as mill sites additional to or in connection with existing mill sites, but on the contrary expressly limits the amount of land to be taken in connection with a mill to five acres.

Id.[19]

There are also cases addressing whether applicants may patent millsites in connection with more than one mining claim. The outcome of these decisions has not been uniform, but they have uniformly maintained the five-acre limitation and imposed the rule that applicants must demonstrate the need for all five acres of millsite per mining claim.

The earliest decision we have found is Mint Lode and Mill Site, 12 L.D. 624 (1891), where the Department took a strict "one-for-one" view of the relation between a dependent millsite and the mining claim with which it is associated. The case involved an application for a patent on a millsite that was one of five millsites used in common in connection with five lode claims. The Acting Secretary held:

> [The Mining Law] evidently intends to give to each operator of a lode claim, a tract of land, not exceeding five acres in extent, for the purpose of conducting mining or milling operations thereon, in connection with such lode. This excludes the idea that the millsite is to be used in connection with other lodes. The object of the millsite is to subserve the necessities of the lode to which it is attached, for mining and milling purposes.

Id. at 625.

While Mint Lode was never expressly overturned, subsequent decisions took a different approach, permitting a dependent mill site to serve more than one lode claim. In Alaska Copper Co., 32 L.D. 128 (1903), the Acting Secretary adopted a rule that generally allowed only one five-acre millsite in connection with a group of lode claims. Alaska Copper Co. involved eighteen millsites located around a harbor in connection with eighteen lode claims. The evidence indicated that only one of the millsites was even arguably being used for mining purposes. Id. at 130.

The Acting Secretary held the millsite locations invalid for several reasons, among them that applicants are not automatically entitled to one millsite per mining claim.

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[19] One year later, the Secretary decided another case involving the same applicant. Hecla Consolidated Mining Co., 14 L.D. 11 (1892), involved an application for two adjoining five-acre millsites with a custom quartz mill straddling the line between the sites. The Secretary held that, because the Mining Law limited each location of a custom millsite to five acres, the entries could not stand unless the applicant could demonstrate that the improvements on each site could operate as a quartz mill or reduction works independently of the other. Id. at 12.

> [The] manifest purpose [of R.S. 2337] is to permit the proprietor of a lode mining claim to acquire a small tract of noncontiguous nonmineral land as directly auxiliary to the prosecution of active mining operations upon his lode claim, or for the erection of quartz-mills or reduction works for the treatment of the ore produced by such operations. The area of such additional tract is by the terms of the statute restricted to five acres as obviously ample for either purpose. . . . Whilst no fixed rule can be established, it seems plain that ordinarily one mill site affords abundant facility for the promotion of mining operations upon a single body of lode claims. It is not to be supposed that Congress intended a grant of an equal number of such tracts as rightfully incident to all the lode claims of a compact group held and worked under a common ownership.

Id. at 129-30.

Regardless of the number of millsites sought, the Department has consistently required applicants to demonstrate the necessity of the acreage sought to be patented as a millsite. For example, in another case involving an application for more than one millsite, the Secretary held that "where more than one mill site is applied for in connection with a group of lode claims a sufficient and satisfactory reason therefor must be shown." Hard Cash and Other Mill Site Claims, 34 L.D. 325, 326 (1905). Decades later, in United States v. Swanson, 14 IBLA 158 (1974), the Interior Board of Land Appeals (IBLA) stated:

> [A] claimant is entitled to receive only that amount of land needed for his mining and milling operations, and this amount can embrace a tract of less than five acres. The statute states that the location shall not "exceed five acres." . . . The reference to five acres in the statute is clearly a ceiling measure, not an absolute, automatic grant.
>
> We believe that in granting a gratuity of a millsite the Government is entitled to require efficient usage, so that only the minimum land needed is taken.

Id. at 173-174.

Thus, where the need is shown, a patent applicant may claim more than one five-acre millsite in connection with a group of mining claims. The Department has never held, however, that a claimant may patent more than five acres of land for a millsite in connection with one mining claim.

E. Treatises and scholarship on the millsite provisions of the Mining Law support the Department's regulations and decisions to permit, at a maximum, five acres of millsite for each associated mining claim.

Since enactment of the Mining Law, there appears to have been little doubt among miners and mining lawyers that the law allowed no more than five acres of millsite area in connection with each mining claim. See 2 *Lindley on Mines* § 520, at 1173-74 (3d ed. 1914) (noting that a "lode proprietor may select more than one tract if the aggregate does not exceed five acres"); see also Barringer & Adams, *The Law of Mines and Mining*, at 504-05 (1897) ("Each lode claimant is entitled to take up to five acres of non-mineral land not contiguous to his lode . . . . A mill site may be composed of several tracts, provided they do not exceed five acres in the aggregate."); Snyder, *Mines and Mining* § 324 (1902) ("The statute authorized the location, by the owner or proprietor of a lode or placer claim, of non-adjacent surface ground, not to exceed five acres, as a mill site."); Greer, "Millsites: Nonmineral Mining Claims," 13 *Rocky Mtn. Min. L. Inst.* 143, 169 (1967)("[A]s to claim-connected millsites, there is a limitation on the number of claims which may be located in connection with a lode claim or claims. The owner of several contiguous lode mining claims is not necessarily entitled to a millsite for each lode claim.").

In a 1968 statement submitted to the Public Land Law Review Commission, the leading trade association for the mining industry identified the limited acreage available under the millsite provision of the Mining Law as an impediment to modern mining.

> When the mining laws were enacted in 1872, provision was made for the acquisition of five-acre millsites to be used for plant facilities on mining claims. The typical mine then was a high-grade lode or vein deposit from which ores were removed by underground mining. The surface plant was usually relatively small, and acquisition of five-acre millsites in addition to the surface of mining clams . . . adequately served the needs of the mines . . . .
>
> Today, the situation is frequently different . . . . A mine having 500 acres of mining claims may, for example, require 5000 acres for surface plant facilities and waste disposal areas. It is obvious that such activities may not be acquired through five-acre millsites.

American Mining Congress, *The Mining Law and Public Lands*, at 29 (January 11, 1968).

Nine years later, as part of their comprehensive treatment of the law governing millsites, two mining industry lawyers wrote:

> Theoretically one five-acre millsite can be acquired for each valid mining claim. However, only as much as ground as is needed for a particular use can be appropriated under a single millsite or a connected group of millsites.

Parr & Kimball, "Acquisition of Non-Mineral Land for Mine Related Purposes," 23 *Rocky Mtn. Min. L. Inst.* 595, 641-42 (1977).

Similarly, a 1979 study by the Congressional Office of Technology Assessment stated:

> [I]t is highly doubtful that [millsites] could satisfy all the demands for surface space. There could be at most as many millsites as there are mining claims, and each millsite would be at most one-fourth the size of the typical 20-acre claim, so that the millsites, in the aggregate, would be one-fourth the size of the ore body encompassed by the claims.

Office of Technology Assessment, *Management of Fuel and Nonfuel Minerals in Federal Land*, at 127 (April 1979).

The second edition of *American Law of Mining*, however, began to suggest there was some flexibility in the law:

> In theory, an unlimited number of millsites might be appropriated by a single mining operator and held or patented as long as each independently meets the requirements of the law.

1 *Am. L. Mining* § 32.06[4] (2d ed. rev. 1987).[20] The meaning of this statement is unclear. If the proviso that each millsite "independently meets the requirements of the law" means that, in addition to being non-contiguous, non-mineral, and used or occupied for mining or milling purposes, each site must be associated with a separate, valid mining claim, then it is consistent with the Department's interpretation of the statute.[21]

It is possible that the treatise's authors and editors were themselves unsure of the import of their statement. In a subsequent part of the same edition of the treatise, in a section entitled "Unresolved Issues Concerning Mill Sites," the treatise states that "[u]ncertainty also surrounds the issue of the amount of land that may be used by millsite claimants." Id. at § 110.03[4] (2d ed. 1984).[22] Indeed, another passage in the treatise suggests that the editors and authors do not believe that an unlimited number of millsites may be claimed:

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[20] The first edition of this book contained no such statement. To the contrary, it stated, "A mill site may, if necessary for the claimant's mining or milling purposes, consist of more than one tract of land, provided that it does not exceed five acres in the aggregate." 1 *Am. L. Mining* § 5.35 (1960). *American Law of Mining* is written and edited primarily by attorneys for the mining industry, with the assistance of some academics. This particular section of the ALM was written by Loren L. Mall of Brega & Winters, P.C. in Denver and Donald Salcito of Balllard, Spahr, Andrews and Ingersoll, also in Denver.

[21] The only authority the treatise cites is Utah Int'l, Inc., 36 IBLA 219 (1978), in which 84 of 314 millsites included in a patent application were approved. However, IBLA did not address the question of how many millsites could be patented, and nothing in the decision indicates the number of mining claims associated with the millsite claims.

> The acquisition of federal lands or interests therein by means other than the locating of mining claims or mill sites is sometimes necessary to provide the additional ground needed for a planned mining operation. The restraints on the number and size of mill site claims can limit their usefulness as a land acquisition method.

Id. at § 111.01 (2d ed. rev. 1987).[23]

III. Conclusion

The evolution of the mining industry over the years has increased the need, with some mining practices, to secure the use of ancillary acreage to support locatable mining operations. For some kinds of mining, the five-acre limitation precludes obtaining that acreage. From this perspective, the five-acre limit may be seen as a hopeless anachronism, even though it was affirmed by Congress as recently as 1960.[24] But many aspects of the Mining Law have that appearance, simply because of the vintage of the statute. The $2.50 and $5.00 per acre patent fees, fixed in 1872 by Congress and never changed since, have fallen totally out of step with the times, but the Department is not free to fix higher fees for patenting without the consent of Congress.

So it is with the millsite limitations. As Judge J. Skelly Wright once wrote, in holding that a statutory acreage limitation on a public land grant must be followed despite its seemingly anachronistic character:

> Congress, by enacting Section 28, allowed . . . companies to use a certain amount of land. . . . These companies have now come into court . . . and have said, "This is not enough land; give us more." We have no more power to grant their request, of course, than we have the power to increase congressional appropriations to needy recipients.

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[22] This section was written by Patrick Garver of Parsons, Behle & Latimer in Salt Lake City.

[23] This section was written by Jerry L. Haggard of Apker, Apker, Haggard & Kurtz, P.C. in Phoenix and by Daniel L. Muchow of Quarles, Brady & Fannin, also in Phoenix.

[24] Still, as noted earlier, various strategies are available to, and have been employed by, mining operations to cope with this limitation, including obtaining leases, permits, or authorizations under other laws for permission to use public lands for milling and ancillary operations, and exchanging land elsewhere for public land.

Wilderness Society v. Morton, 479 F.2d 842, 891 (D.C. Cir.) (en banc), cert. denied, 411 U.S. 917 (1973).

Further, BLM's current administrative practice cannot supersede the plain words of the statute. "We cannot accept the contention that administrative rulings -- such as those here relied on -- can thwart the plain purpose of a valid law." United States v. City and County of San Francisco. 310 U.S. 16, 31-32 (1940).

Finally, grants of federal land are to be "construed favorably to the Government, that nothing passes except what is conveyed in clear language, and that if there are doubts they are resolved for the Government, not against it." United States v. Union Pacific R. Co., 353 U.S. 112, 116 (1957); see also Watt v. Western Nuclear, Inc., 462 U.S. 36, 59 (1983) (mineral reservation under Stock-Raising Homestead Act construed in favor of government to include gravel); Andrus v. Charlestone Stone Products Co., Inc., 436 U.S. 604, 617 (1978) (Mining Law construed in favor of government to exclude water from locatable "valuable minerals"); Sutherland, supra at § 64.07.

The Secretary faces a heavy responsibility in administering patenting under the Mining Law of 1872. As Justice Van Devanter, a former Departmental chief legal officer, once wrote: "[The Secretary is] charged with seeing that this authority is rightly exercised to the end that valid claims may be recognized, invalid ones eliminated, and the rights of the public preserved." Cameron v. United States, 252 U.S. 450, 460 (1920). In order to exercise this responsibility most prudently, the Department should reject patent applications which seek to patent more than five acres per associated mining claim.

Therefore, for the reasons explained above, I recommend that the Bureau promptly, with the help of my Office, update its Manual to be consistent with this Opinion. These modifications to the Manual and to BLM's administrative practice should be applied immediately, including with regard to pending patent applications. As is clear from this Opinion, those BLM offices that have approved patent applications for multiple millsites have been doing so in contravention of the Mining Law, BLM's regulations, and Departmental decisions. Further, BLM's apparently recent ad hoc changes in practice to permit patenting of multiple millsites did not result from formal changes to the Bureau's or the Department's rules and regulations, and were not subject to wide public review and comment, nor to Solicitor's Office review. Finally, as reflected in treatises and other commentary, including those by industry lawyers, the limitations of the millsite provision appear to have been widely, if not uniformly, appreciated. Therefore, I do not regard immediate application of this Opinion to pending applications to be unreasonable or to thwart any legitimately held expectation to the contrary.

This Opinion was prepared with the assistance of Eric Nagle, Portland Regional Solicitor's Office; Monica Burke, formerly an attorney in the Office of the Solicitor; Sharon Allender, formerly Assistant Solicitor, Onshore Minerals, Division of Mineral Resources, Office of the Solicitor, Karen Hawbecker and Joel Yudson, Division of Mineral Resources, Office of the Solicitor, and Wendy Thurm, Special Assistant to the Solicitor.

John D. Leshy
Solicitor

NOV 12 1997

I concur: ______________________ ____________
Secretary of the Interior Date

UNITED STATES DEPARTMENT OF THE INTERIOR
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May 27, 1998

In Reply Refer To:
3890(P)
(CA-920)

EMS TRANSMISSION: 5/27/98
Instruction Memorandum **No. CA 98-110**
Expires: 9/30/99

To: All Field Offices

From: Deputy State Director, Energy and Minerals

Subject: Procedures for Review of Mineral Patent Reports

Program Area: Mining Law Administration; Review of Mineral Patent Reports

Issue: Ensuring that mineral investigations and mineral patent reports are conducted and prepared in compliance with Bureau of Land Management (BLM) policy and guidance, and that the mineral reports meet the objectives for which they have been prepared, all in an environment requiring increasing sophistication and high skill staff levels.

Background: As a result of the WO review of mineral reports supporting mineral patent applications since 1993, and an Inspector General's Office review of the overall mineral patent program, mineral reports were found to not meet the minimum requirements for consistency with policy and guidance. The mineral reports did not support the needs for which they were prepared. Not all mineral reports were of concern, however, there was enough of a problem bureauwide to indicate that a solution was needed to upgrade the quality of the investigations and reports.

In April 1998, the BLM held it's first course (seminar; BLM Course 3000-77) for Certified Review Mineral Examiners (CRME's). At the seminar, issues regarding the quality and competence of mineral reports prepared for mineral patent applications were discussed. Some common flaws identified are given on Attachment 1, prepared by Roger Haskins (WO-320), and Attachments 2 through 4, prepared by the Solicitor's office. It was made clear that the CRME's are responsible for ensuring the quality and utility of mineral reports through the technical review process.

In addition, there is not an adequate arbitration process for review of mineral reports where the CME and the CRME could not develop consensus during the review process. At this time, the Certification Panel (BLM Manual 3894) has informally agreed to be the arbitrator between the CME and the CRME upon the State Director's request.

Policy: No positive mineral patent report will be considered complete, nor will leave California for the WO office without a proper technical review. It is incumbent on field managers, CME's and CRME's in California to assure that mineral investigations are completed and mineral reports prepared to the technical and legal standards directed by WO policy and guidance.

To affect this policy, all CRME's are assigned with the CME to mineral patent investigations. CME's will coordinate field actions with the CRME at the earliest stage of the investigation to help resolve issues or potential conflicts that might occur during the field investigation and/or the mineral report preparation. CRME's must be familiar with, and qualified to review mineral reports prepared for the type action requiring investigation.

Approaches to technical review of mineral patent reports were prepared by Roger Haskin and presented at the CRME Seminar (Attachment 5). These will serve as guidelines for reviews in California. I suggest that CME's become familiar with these guidelines so that they are aware of the review requirements. In the conduct of technical review, CRME's are encouraged to coordinate informal reviews as often as possible to assure a good product. Upon request by the CME, a formal and final review will be made by the CRME. Corrections, comments, and recommendations made by the CRME to the CME will be clearly documented. Where conflicts develop between the CME and CRME, a request for arbitration by the field manager will be made to the Deputy State Director, Energy and Mineral Resources (CA-920).

I cannot emphasize more clearly that the professionalism of the CME's, CRME's and the BLM in general are reflected in mineral reports. These reports are open records and provide the public as well as other agencies with insight as to the capability and competency of the BLM to investigate mineral patent applications.

Budget Implications: None.

Coordination: James R. Evans, Senior Technical Mineral Specialist, Division of Energy and Minerals, (916) 978-4378.

Contact: As above under "Coordination."

Signed
Leroy Mohorich
Acting DSD, Energy and Minerals

Authenticated
AJ Ajitsingh
Records Management

5 - Attachments:
1 - Common flaws in Mineral Reports (15 pp)
2 - Report Review- Solicitor's Office (1 pg)
3 - Specific Issues- Report Review (2 pp)
4 - Withdrawals – MPA's (4 pp)
5 - Approaches to Technical Review (7 pp)

Only Attachment 5 is contained on the following pages.

Course 3000-77 Technical Review of Mineral Reports
National Training Center
April 20-24, 1998

Roger A Haskins CRME No. 003
Solids Group (WO 320)

Approaches to Technical Review

I. Role of the Reviewer

A. Technical Accuracy.

B. Legal Accuracy.

C. General Readability and Comprehension.

D. Quality Control.

II. Audience of the Final Product

A. Past Practice - BLM CRME, DSD and DM.

B. Now BLM HQ CRME and Solicitor's Office either at HQ or Field Solicitor level.

III. Documentation of the Review

A. Necessary for Audit Control.

B. Necessary for CME appraisal.

C. Necessary for Justification of Recommendations and/or Contest.

D. Use memo and detailed list of corrections for CME to follow.

E. If you use "sticky notes" photocopy page of draft report with "sticky notes" in place.

F. Document what questions need to be answered to validate these mining claim or sites?

IV. Review Checklist

A. Use Matt's NTC material.

B. Use Form 3060-2 as cover sheet for time being.

V. Professionalism in Reviewing a Mineral Report

A. Be diplomatic, even if you can't stand the person.

B. You are a professional, act like one (you might be in the same boat someday!).

C. "Good old boy" process is neither useful or desirable.

D. Focus on "meat" and substance. Nit picking minor errors can be irritating to both reviewer and CME.

E. Focus on the questions that need to be answered in the examination and the necessary data and analysis required to answer those questions.

VI. Examiner and Reviewer Relationships

A. Keep it Professional!! Keep personalities out of it.

B. Reviewer's job is a quality control function, even if it is not appreciated by the examiner.

C. Reviewer's job is to guide the report through to completion and to ensure it is technically and legally adequate for the purpose intended. It should focus on the questions that need to be answered for the commodity(ies) and property concerned

D. Reviewer and CME should be working together on the project on a cooperative basis, keeping in mind that the final review will be at HQ level in mineral patent cases.

E. Reviewer should be consulted by CME whenever "sticking points" arise. Its better to resolve problems at the initial stages instead of having a problem grow to major proportions later in the process.

VII. Peer Assistance and Help (Examiner and Reviewer)

A. Don't be afraid to ask for help!

B. No one person has all of the information or knowledge about all deposit types or mine processes that occur in this world!

C. The Panel can assist in referrals to CME's that have experience and expertise in the different commodities and types of operations.

D. The Office of the Solicitor, Mineral Resources Branch, should be consulted early on if the situation may generate new case law, or if the issue raises new or novel legal aspects that will need to be addressed in the processing of the mineral examination and report.

VIII. Examiner and Supervisor Relationships

A. Technical and legal criteria are not subject to management intervention.

B. If management is attempting to influence or subvert the examination process, bring it to my attention, along with the pertinent details. I will have "line management" intervene from this level.

C. If supervisor is giving a CME a "hard time" over the length or cost of examination, reviewer should be prepared to intervene and explain to supervisor the an examination cannot be done "overnight" and that yes, assays are expensive but are a vital and essential component of the validation process.

D. Remainder to supervisors - if its not done right the first time - HQ will remand it and it will be done again!! (at your additional cost of course).

IX. Focus of a Review

A. What are the questions that require an answer for this property and the commodities involved?

B. Are the questions all addressed?

C. What are the technical standards and criteria necessary to answer these questions?

D. What legal standards (case law) are associated with these questions?

E. Has the case law been properly applied in answering these questions?

F. Are the topics contained in the Mineral Examiners Handbook and the Mineral Report Manual addressed?

G. Are these topics addressed adequately so that the report will pass administrative muster?

H. Are these topics and the questions to be answered addressed in the proper level of technical and legal detail?

I. Are the conclusions and recommendations of the report adequately supported by the technical material in the report?

J. Is the level of analysis in each section of the report sufficient to sustain and justify the CME's conclusions?

K. Focus on critical material, critical data, and critical analytical material required to substantiate the CME's answers to the questions under consideration and to the CME's rationale for the conclusions reached.

L. Do not review the report as if it were going to be published in the Journal or Economic Geology or the Journal of the Geological Society of America!!!!

X. Technical Standards to be Applied in a Review of a Mineral Report

A. Is the sampling approach and assay method generally applicable to this form of deposit and commodity?

B. Is the cost estimation method(s) chosen generally applicable to this form of mining operation and associated deposit?

C. Is the milling and beneficiation method(s) generally applicable to this commodity and form of deposit?

D. Is the economic analysis method chosen realistic and sensible for this operation?

E. Is the assignment of cutoff grades and therefore ore reserves allocation rational given the information derived from the geology, mining methods, milling, and project economics?

F. Is the mineral-in-character analysis based upon sufficient geologic information to pass the "red face test?"

G. Is the geologic mapping tied to the deposit and mineralization and in sufficient detail to answer your questions?

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H. Is the sampling program tied to the geologic framework or model?

I. Has the examiner fully explained for the intended audience any process or procedure that the informed layperson would not immediately recognize or be familiar with?

J. If the examiner decides not to use certain data and information of the claimant in the mine model or elsewhere, has the examiner fully explained the rationale for doing so?

XI. Legal Standards to be Applied in a Review of a Mineral Report

A. Has the general case law for discovery and marketability been referenced and applied?

B. Has commodity specific case law been referenced and applied?

C. If the examination discloses unusual or unique circumstances, has the examiner researched the matter and cited and applied the applicable case law?

D. If the examination discloses unusual or unique legal circumstances, has the examiner consulted with the Solicitor's Office?

E. If there is no case law available, has the examiner then fully explained the rationale for proceeding on the chosen path?

XII. Differences of Professional Opinion

A. Distinction is made between differences over case law application and technical standards in the course of the examination.

B. In all cases, the published case law on a specific issue is dispositive of the issue, even if the CME or reviewer may personally disagree over the position of the IBLA or Courts on the matter.

C. Each type of mineral deposit has an accepted method (s) of sampling and assaying associated with it. These accepted standards are expected to be observed by all examiners and reviewers in the course of the examination and review.

D. Novel or unusual deposits or commodities should be researched and see if there is an industry accepted method(s) for it. If so, use it. If not, study the matter logically and formulate a procedure to handle it.

E. Consultation with other CME's. reviewer's. Panel members. and the Solicitor's Office is encouraged if the situation is unusual or unique.

F. It a difference of professional opinion on approach to a specific problem cannot be resolved between the examiner and the reviewer. the matter is to be referred to the Mineral Examiner's Certification Panel. The Panel will confer and suggest the recommended method(s) for the issue at hand.

G. If the difference of professional opinion will result in an irreconcilable deadlock between the reviewer and the examiner. the matter is to be referred to the Panel who, on behalf of the Assistant Director, will resolve the matter.

XIII. Third Party Arbitration

A. If the reviewer and examiner cannot reach agreement on modifications to a mineral report, the report can be sent to another reviewer for a second opinion by the DSD concerned.

B. The Panel can also act as the second reviewer. with a Panel member with the appropriate area of expertise providing either a second opinion. or the actual review if necessary.

XIV. Formal Review Chain of Command

A. Transmittals for review should be by cover memorandum for the actual review. Peer reviews and informal reviews prior to formal submission are not necessary to document.

B. Transmittals for third party second opinions or Panel review should be documented by cover memoranda also.

XV. Secretarial Review Process at BLM Headquarters

A. Transmittal from SD - to AD (300) of case file with report included.

B. Routed to me in Solids Group (320) as HQ CRME.

C. I review or route report to selected CRME acting as extended HQ reviewers.

D. I review remainder of case file for technical adequacy prior to transmittal to Director.

E. Assuming report and case file are in order. transmittal with report of finding and recommendations is sent to Director for concurrence.

F. After Director concurs (usually pro forma process). case file goes to Office of the Solicitor for final Departmental legal review.

G. If problems with report or case file occur. and they are not major. I will contact State Office directly and have things "fixed" and FEDEXed into my office.

H. If major problem occurs. I will. through the office of AD-300. remand the case file and report to State Office with written instructions on what requires corrective action.

XVI. Role of Solicitor's Office Final Review

A. Mineral Resources Branch receives case file and logs it in.

B. Case assigned to an attorney for review

XVIII. Interaction of BLM HQ and SOL in Final Secretarial Review Process

A. If questions arise concerning report or file, attorney usually contacts me and we go over the situation. Most of issues can be resolved at this stage.

B. If issue is one the SOL feels requires additional field input. they contact State Office directly.

XIX. Interaction of Field with HQ and SOL in Secretarial Review Process

A. Field and SOL interact on case specific basis. with copies to me as AD-300 program lead.

B. After additional information requested is received, the attorney will make final recommendations to SOL as to disposition of the case.

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